

**Keaton, Jennifer**

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**From:** Cory Chase <corylchase@gmail.com>  
**Sent:** Monday, July 22, 2019 9:57 AM  
**To:** WV Legislative Rules Comments  
**Subject:** Industrial hemp rules

Dear Ms. Birchfield,

While I don't have a permit, I plan to apply for one during the next enrollment period. Please consider the implications of the new regulatory framework with regards to our fledgling hemp industry. For WV to remain competitive with other states and keep entrepreneurs and farmers in business, we mustn't forget about government overreach and it's damaging affects on this (or any) industry. Saddling small businesses and small farms with unnecessary regulations will stunt the progress of this program and hurt our state, it's farmers, businesses, and residents.

I am in full support of the recommendations from WV Hemp Industries Association, which help address redundancies in the law and wasteful costs to farmers. Creating licensure options instead of requirements allows for smaller operations to stay in the black so they can work up to afford licensure and other associated costs.

Thank you for your time and I hope you will consider this input from a lifelong Wvian who wants to see his state grow and thrive.

Sincerely,

Cory Chase  
1602 Appalachian Highway  
Dryfork, WV 26263

304-599-4906

# West Virginia Department of Agriculture

Kent A. Leonhardt, Commissioner  
Joseph L. Hatton, Deputy Commissioner



July 26, 2019

Cory Chase  
corylchase@gmail.com

Dear Mr. Chase:

Thank you for submitting public comments in response to the West Virginia Department of Agriculture's (WVDA's) proposed legislative rule, **61 C.S.R. §29, Industrial Hemp**, and **61 C.S.R. §30, Hemp Products**. All comments were reviewed by Department staff, compared to current law and practices in other jurisdictions, and considered for inclusion. Below are the responses of the Department.

**Comment:**

Your comment expressed support for the comments submitted by the West Virginia Hemp Industry Association.

**Response:**

The Department has fully responded to the comments submitted by the West Virginia Hemp Industry Association and those responses are on file with the West Virginia Secretary of State. A copy of that response is attached.

We appreciate your interest in these legislative rules and your participation in the public comment process. We look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent A. Leonhardt", is written over a horizontal line.

Kent A. Leonhardt  
Commissioner

# West Virginia Department of Agriculture

Kent A. Leonhardt, Commissioner  
Joseph L. Hatton, Deputy Commissioner



July 26, 2019

J. Morgan Leach  
WVHIA President  
[lmorgan@wvhia.org](mailto:lmorgan@wvhia.org)

Dear Mr. Leach:

Thank you for submitting public comments in response to the West Virginia Department of Agriculture's (WVDA's) proposed legislative rule, **61 C.S.R. §29, Industrial Hemp**, and **61 C.S.R. §30, Hemp Products**. All comments were reviewed by Department staff, compared to current law and practices in other jurisdictions, and considered for inclusion. Below are the responses of the Department.

#### Comment:

**§61-29-3.11** - We oppose this section in its entirety. *W. Va. Code §19-12E* prohibits the department from requiring a license to possess, handle, or process hemp. "Notwithstanding any provision of the code to the contrary, a person need not obtain a license to possess, handle, transport, or sell hemp products or extracts, including those containing one or more hemp-derived cannabinoids, including CBD." *W. Va. Code §19-12E-5 Industrial Hemp Licensing(f)(1)*.

#### Response:

The Department disagrees with this interpretation. Licensure to grow industrial hemp is specifically required by West Virginia Code §19-12E-5(a) ("A person growing industrial hemp shall apply to the commissioner for a license on a form prescribed by the commissioner."). *See also* W. Va. Code §19-12E-7 (authorizing rulemaking for "[l]icensing persons who wish to grow, cultivate, handle, or process industrial hemp"). The language cited refers to required licensure to handle "hemp products or extracts," and not the raw hemp product.

#### Comment:

**§61-29-3.12.b** - We oppose the requirement to re-submit background checks after three years as it is not necessary due to section 4.5. Section 3.12.b is redundant of section 4.5 that requires a licensee to report any subsequent changes to their application, including the background check. Section 4.5 achieves the same regulatory purpose that ensures the Licensee maintains a clear background check to maintain their hemp license.

#### Response:

During the 2019 Regular Legislative Session, the Legislature explicitly authorized background checks of both initial applicants and others involved with the program. *See* W. Va. Code §19-12E-5(c) ("The commissioner shall require each first-time applicant, and may establish requirements for other persons involved with the industrial hemp program, to submit to a state and national criminal history record check."). The Department maintains that it is sound policy, both to protect the integrity of the program and to ensure compliance with the 2018 Farm Bill, which prohibits licensure of individuals who

have committed certain felonies within the preceding ten years.

**Comment:**

**§61-29-4.1** - We oppose the requirement for Licensees to submit a letter and their license to the County Sheriff and State Police. This purpose may be achieved by simply publishing the list of Licensees on the WV Department of Agriculture's website. This list is currently available on the Department's website for the county Sheriffs and State Police to access.

**Response:**

The requirement in question was added at the request of the Legislature during the 2019 Regular Session. The Department believes it is good policy for growers and possessors of raw industrial hemp to work collaboratively with law enforcement, and believes that this requirement accomplishes that purpose.

**Comment:**

**§61-29-5** - We recommend the addition of model language in this section that fairly accommodates various harvesting techniques and markets for both intact flower and ground floral materials harvested from hemp.

**Response:**

The Department is awaiting final guidance from the U.S. Department of Agriculture regarding the sampling and testing protocols that will be utilized. Until that guidance is provided, the Department has chosen to utilize the current testing protocols. Those protocols require pre-harvest testing, which must be done before harvest, and necessarily cannot verify the form in which the producer will ultimately provide the material to the processor.

The Department notes that sampling and testing protocols are not explicitly laid out in its legislative rule, which allows the Department to adjust its policies based on the feedback and direction provided by the U.S. Department of Agriculture and the practices of surrounding states. The Department contends that its current pre-harvest sampling practices are in line with those utilized in large number of other states and do not put the Department outside the mainstream.

**Comment:**

**§61-29-5.4 (b)** - We recommend an amendment with the following language to permit duplicate sampling for third party analysis. "The sampled material shall be divided into three equal parts. One part shall be used for testing, one part shall be retained for retesting, and one part may be sent by the Department through their chain of custody protocols to a third party laboratory. Sampled material will only be sent to a third party laboratory at the request and expense of the Licensee."

**Response:**

The Department declines to adopt this policy. A licensee can collect and send a sample to a third party at the same time the Department collects its samples. Official results for required THC testing, however, are determined by the Department laboratories. Further, the Department's laboratories already split a single sample, as required by rule, into two test batches, and further divide each of those samples when performing testing, which allows for up to four tests of a sample to be performed before an adverse determination is made.

**Comment:**

**§61-29-5.7** - We recommend that the Department be required to provide actual mileage incurred for inspection and sampling. If the Department goes to a single county to test multiple farms, that mileage

should be shared pro-rata between the farms that are inspected on that trip. For example, if the Department drives to a farm in Wood County for testing, they should not bill each farm in Wood County for the travel time and mileage from the Guthrie Center to their farm, but rather, the Department should aggregate the travel time and mileage driving to that county and bill each farmer that was inspected with a pro-rata share of that cost.

**Response:**

The Department concurs that the current rule language is unclear regarding actual mileage, and has submitted proposed changes to the rule to address that issue. *See* Section 5.7 (“As part of inspection and testing, each licensee shall pay actual mileage incurred, plus a charge of \$35/hour per inspector for actual drive time, mileage, inspection and sampling time. In addition, each licensee shall pay for all actual incurred laboratory analysis testing costs that the Department considers appropriate, including retesting.”)

**Comment:**

**§61-29-6.11b** - We opposed this requirement for the same reasons set forth in comment 1 above.

**Response:**

As noted above, during the 2019 Regular Legislative Session, the Legislature explicitly authorized background checks of both initial applicants and others involved with the program. *See* W. Va. Code §19-12E-5(c) (“The commissioner shall require each first-time applicant, and may establish requirements for other persons involved with the industrial hemp program, to submit to a state and national criminal history record check.”). The Department maintains that it is sound policy, both to protect the integrity of the program and to ensure compliance with the 2018 Farm Bill, which prohibits licensure of individuals who have committed certain felonies within the preceding ten years.

**Comment:**

**§61-30** - We oppose the requirement for registering those who possess, handle, transport or sell hemp products or extracts. Rather, we recommend that registering hemp products be an “option” for retail establishments in West Virginia, as the enabling statute prohibits the department from requiring them to obtain a license as stated in *W. Va. Code §19-12E*.

**Response:**

During the 2019 Regular Legislative Session, the Legislature directed the Department to develop regulations for “[t]he production, sale, possession, handling, or transport of hemp products and extracts, including those containing one or more hemp-derived cannabinoids, including CBD.” W. Va. Code §19-12E-7(6). Further, the Department was granted broad authority by the Legislature to do so. Following a review of current regulatory structures already utilized at the Department, and a review of the manner in which other States were addressing hemp products, the Department concluded that the most effective way to fully carry out this legislative mandate was to require registration of both the products (which may come from both inside and outside the state) and the selling locations within the State of West Virginia. The Department disagrees that product and selling location registration constitutes a “de facto” licensure. Registration is a ministerial task, whereas licensure affords discretion and contemplates evaluation of credentials and eligibility. However, following discussions with stakeholders and internal discussions, and to further the goals established above, the rule was amended to include a decal or other indication that the selling location was authorized and registered, which will allow for easier regulation and reward those who are following the rules. *See* Section 5.7 (“5.7. Retail facilities that register with the Department will be provided a verification document, in the form of a certificate or otherwise, for display at the retail location, which will indicate that the retail facility is an authorized location for the sale and/or distribution of hemp products.”).

**Comment:**

§61-30-2.18 - We recommend the following amendment to this section to conform with *W. Va. Code §19-12E*.

"Licensee" means an individual or business entity possessing a license issued by the Department to grow, handle, cultivate, or process hemp. A "licensee" also means an individual or business possessing a license issued by the Department to sell and/or distribute hemp products.

**Response:**

The Department concurs in part. The second portion of the definition addresses those who are covered by the registration process, and not by the licensure covered by 61 C.S.R. § 29. The Department has created a new definition of "Registrant" to address the concerning portion of Section 2.18, and has made changes throughout the rule to correspond. The Department declines, however, to change the first portion of the definition, because it is identical to that found in W. Va. Code §19-12E-3(i).

**Comment:**

§61-30-2.24 - We recommend removing this section in its entirety. This section is redundant of Section 2.13 that defines hemp, including the THC threshold. This section automatically accommodates the federal standards, allowing the Department to conform with any changes on the federal level.

**Response:**

The Department declines to make this change. The inclusion of this definition is necessary to ensure that there will not be confusion as to how THC is defined. This statement is also needed in the event that the Department need to change the way that THC is calculated, based on federal guidance.

**Comment:**

§61-30-3.1 - We recommend removing the requirement for retailers who sell hemp products to register products grown and manufactured in West Virginia. The Department will be involved in regulating the production and manufacturing of products sold in West Virginia, making these additional fees unnecessary and redundant. Section 4.1 required the manufacturer to register their products that retailers will ultimately sell. The Department should require registration for out of state products to ensure that they meet our quality control standards as they were not grown or manufactured in the state under our regulatory framework.

**Response:**

The Department disagrees. There are currently no other rules to regulate final hemp products. The WVDA needs to know what final products are on the market (regardless of the product origin). This will ensure that all hemp products, not just those manufactured outside of the state, that are on the market are safe for public use. Moreover, the Department's oversight of the production and manufacturing process (covered in 61 C.S.R. §29) addresses the process for manufacturing products, and not the content, labeling claims, or other issues related to the products themselves that are addressed by this legislative rule.

**Comment:**

§61-30-4.3 - We recommend removing this section in its entirety. Rather, we suggest that the manufacturer or retailer of a product be required to register with the Department to put the Department on notice, but not be required companies to "register" every single hemp product at \$200.00 per product.

**Response:**

The fee related to the registration of product will be used toward costs incurred by the registration specialist, compliance officer, regulatory inspectors, chemists, and microbiologists and related costs to

collect samples, determine the suitability of the product labels, and analyze the samples for a variety of different analytes. The Department is not supported fiscally by any other means for this program and will not be capable of ensuring safe hemp products and consumer safety without the fees. Moreover, in setting its fees, the Department has reviewed fee structures and costs in other states and has determined that the fees established are both necessary to support the program and reasonable compared to other jurisdictions. See W. Va. Code §19-12E-7(4) (permitting legislative rules to address the “[a]ssessment of fees that are commensurate with the costs of the commissioner’s activities in licensing, testing, and supervising industrial hemp production”).

**Comment:**

§61-30-5 - We recommend removing this section in its entirety as it conflicts with *W. Va. Code §19-12E*. The Department is in essence requiring a “de facto license” to distribute hemp products or extracts. This is an overreach and exceeds the scope of regulatory authority granted by the West Virginia Legislature in the enabling statute.

**Response:**

The Department disagrees that product and selling location registration constitutes a “de facto” licensure. Registration is a ministerial task, whereas licensure affords discretion and contemplates evaluation of credentials and eligibility. However, following discussions with stakeholders and internal discussions, and to further the goals established above, the rule was amended to include a decal or other indication that the selling location was authorized and registered, which will allow for easier regulation and reward those who are following the rules. See Section 5.7 (“5.7. Retail facilities that register with the Department will be provided a verification document, in the form of a certificate or otherwise, for display at the retail location, which will indicate that the retail facility is an authorized location for the sale and/or distribution of hemp products.”).

During the 2019 Regular Legislative Session, the Legislature directed the Department to develop regulations for “[t]he production, sale, possession, handling, or transport of hemp products and extracts, including those containing one or more hemp-derived cannabinoids, including CBD.” W. Va. Code §19-12E-7(6). Further, the Department was granted broad authority by the Legislature to do so. Following a review of current regulatory structures already utilized at the Department, and a review of the manner in which other States were addressing hemp products, the Department concluded that the most effective way to fully carry out this legislative mandate was to require registration of both the products (which may come from both inside and outside the state) and the selling locations within the State of West Virginia.

**Comment:**

§61-30-9 - We recommend the addition of a “notice requirement” for manufacturers and retailers before they are inspected and tested by the Department.

**Response:**

The Department disagrees with providing a notice requirement. Effective regulation requires that regulated entities not be apprised of when they will be inspected or reviewed, as the Department wants a true “snapshot” of what happens in a normal workday. Providing notice would undermine the integrity and legitimacy of the regulatory program. Moreover, the Department does not currently give notice for any other programs.

**Comment:**

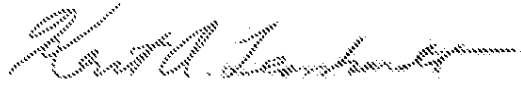
§61-30-10 - Section 10.1 expressly states that the seller is required to apply for their “license” annually. We recommend removing all references to “seller” in this section as it conflicts with *W. Va. Code §19-12E* for the reasons stated herein.

**Response:**

The Department concurs in part, and has modified section 10.1 to remove references to a "license" and replace that reference with a renewal of registration.

We appreciate your interest in these legislative rules and your participation in the public comment process, and we look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent A. Leonhardt", written over a horizontal line.

Kent A. Leonhardt  
Commissioner



**Keaton, Jennifer**

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**From:** WV Legislative Rules Comments  
**Subject:** FW: Rules comments for hemp

**From:** Karen Sims <kfslack89@gmail.com>  
**Sent:** Monday, July 22, 2019 4:10 PM  
**To:** WV Legislative Rules Comments <rulescomments@wvda.us>  
**Subject:** Rules comments for hemp

Please see our comments attached.

[https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fgallery.mailchimp.com%2Fdaf1617de1cc2c5bbc1e195e7%2Ffiles%2Fee90a5be-d997-4fe7-aa91-7009208a56c9%2FPublic\\_Comment\\_Letter\\_1\\_.pdf&data=02%7C01%7Crulescomments%40wvda.us%7C9c0e61411bff46bb184c08d70ee0925b%7C70f25d07e7a24cc5a1564cfd77b95116%7C0%7C1%7C636994230391718001&data=Qc%2BHxbJv4vQLOYs%2Fzc0Mpoax6Fx5ooldWZCWgYxGwE%3D&reserved=0](https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fgallery.mailchimp.com%2Fdaf1617de1cc2c5bbc1e195e7%2Ffiles%2Fee90a5be-d997-4fe7-aa91-7009208a56c9%2FPublic_Comment_Letter_1_.pdf&data=02%7C01%7Crulescomments%40wvda.us%7C9c0e61411bff46bb184c08d70ee0925b%7C70f25d07e7a24cc5a1564cfd77b95116%7C0%7C1%7C636994230391718001&data=Qc%2BHxbJv4vQLOYs%2Fzc0Mpoax6Fx5ooldWZCWgYxGwE%3D&reserved=0)

Karen Sims



West Virginia Hemp  
Industries Association  
902 29th St. Vienna,  
West Virginia 26105  
wvhia.org

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July 15, 2019

Madison Birchfield  
West Virginia Department of Agriculture  
1900 Kanawha Blvd. East, Room E-28  
Charleston, West Virginia, 25305-0170  
[rulescomments@wvda.us](mailto:rulescomments@wvda.us)  
**VIA EMAIL ONLY**

**RE: PUBLIC COMMENTS FOR TITLE SERIES 61-29 AND 61-30**

Ms. Birchfield:

Please see the following public comments to the above referenced legislative rule amendments.

**TITLE SERIES 61-29**

1. ~~§61-29-3.11~~ - We oppose this section in its entirety. *W. Va. Code §19-12E* prohibits the department from requiring a license to possess, handle, or process hemp.

“Notwithstanding any provision of the code to the contrary, a person need not obtain a license to possess, handle, transport, or sell hemp products or extracts, including those containing one or more hemp-derived cannabinoids, including CBD.” *W. Va. Code §19-12E-5 Industrial Hemp Licensing (f) (1)*.

2. ~~§61-29-3.12.b~~ - We oppose the requirement to re-submit background checks after three years as it is not necessary due to section 4.5. Section 3.12.b is redundant of section 4.5 that requires a licensee to report any subsequent changes to their application, including the background check. Section 4.5 achieves the same regulatory purpose that ensures the Licensee maintains a clear background check to maintain their hemp license.
3. ~~§61-29-4.1~~ - We oppose the requirement for Licensees to submit a letter and their license to the County Sheriff and State Police. This purpose may be achieved by simply publishing the list of Licensees on the WV Department of Agriculture's website. This list is currently is available on the Department's website for the county Sheriffs and State Police to access.

4. ~~§61-29-5~~ - We recommend the addition of model language in this section that fairly accommodates various harvesting techniques and markets for both intact flower and ground floral materials harvested from hemp.

"All pre-harvest samples of floral material shall be taken from the designated harvested plot materials in the form (intact plant, flowers, ground materials, etc.) in which the material will be sent to the processor. An inspector must require the licensee to harvest and market the entire crop in the form in which it was tested by the Department."

**For intact-plant samples:**

1. Ensure that the entire harvest is accounted for and in the same form (i.e., intact-plants).
2. Clip the top 20 cm of hemp plant, primary stem, including leaf and female floral material.

**For ground plant or ground floral material samples:**

1. Ensure that the entire harvest is accounted for and in the same form (i.e., all harvested material whether whole plant or floral material only must be ground with no intact plants or whole flowers remaining from that harvest).
2. Sample material from bag or container that is collected from four separate areas in the field from which the material is harvested.

5. ~~§61-29-5.4 (b)~~ - We recommend an amendment with the following language to permit duplicate sampling for third party analysis.

"The sampled material shall be divided into three equal parts. One part shall be used for testing, one part shall be retained for retesting, and one part may be sent by the Department through their chain of custody protocols to a third party laboratory. Sampled material will only be sent to a third party laboratory at the request and expense of the Licensee."

6. ~~§61-29-5.7~~ - We recommend that the Department be required to provide actual mileage incurred for inspection and sampling. If the Department goes to a single county to test multiple farms, that mileage should be shared pro-rata between the farms that are inspected on that trip. For example, if the Department drives to a farm in Wood County for testing, they should not bill each farm in Wood County for the travel time and mileage from the Guthrie Center to their farm, but rather, the Department should aggregate the travel time and mileage driving to that county and bill each farmer that was inspected with a pro-rata share of that cost.
7. ~~§61-29-6.11b~~ - We opposed this requirement for the same reasons set forth in comment 1 above.

TITLE SERIES 61-39

1. ~~§61-39~~ - We oppose the requirement for registering those who possess, handle, transport or sell hemp products or extracts. Rather, we recommend that registering hemp products be an "option" for retail establishments in West Virginia, as the enabling statute prohibits the department from requiring them to obtain a license as stated in *W. Va. Code §19-12E*.

"Notwithstanding any provision of the code to the contrary, a person ~~need not obtain a license to possess, handle, transport, or sell hemp products or extracts~~, including those containing one or more hemp-derived cannabinoids, including CBD." *W. Va. Code §19-12E-5 Industrial Hemp Licensing (f) (1)*.

**Rationale:** The Department's proposed rule is creating a "*de facto license*" for hemp retailers to sell products, which is contrary to statute. If this, however, where an "option" for a retailer to gain Department inspection and approval, this would create a competitive quality standard for products sold in West Virginia. This registration would then inform the consumer as to the quality of the products would and provide retailers an incentive to register their products with the Department and advertise approved products to gain an advantage in the marketplace.

In the alternative, we advocate for the following amendments to Title Series 61-39:

2. ~~§61-39-2.18~~ - We recommend the following amendment to this section to conform with *W. Va. Code §19-12E*.

"Licensee" means an individual or business entity possessing a license issued by the Department to grow, handle, cultivate, or process hemp. A ~~"licensee" also means an individual or business possessing a license issued by the Department to sell and/or distribute hemp products.~~

3. ~~§61-39-2.24~~ - We recommend removing this section in its entirety. This section is redundant of Section 2.13 that defines hemp, including the THC threshold. This section automatically accommodates the federal standards, allowing the Department to conform with any changes on the federal level.
4. ~~§61-39-3.1~~ - We recommend removing the requirement for retailers who sell hemp products to register products grown and manufactured in West Virginia. The Department will be involved in regulating the production and manufacturing of products sold in West Virginia, making these additional fees unnecessary and redundant. Section 4.1 required the manufacturer to register their products that retailers will ultimately sell. The Department should require registration for out of state products to ensure that they meet our quality control standards as they were not grown or manufactured in the state under our regulatory framework.

5. ~~§61-30-4.3~~ - We recommend removing this section in its entirety. Rather, we suggest that the manufacturer or retailer of a product be required to register with the Department to put the Department on notice, but not be required companies to "register" every single hemp product at \$200.00 per product.

Rationale: The regulatory cost is overly burdensome and will result in a cost prohibitive regulation for manufacturers and retailers. This will make products grown and manufactured in this state unable to compete with products that are produced in other states with fewer regulatory costs. Requiring a registration fee of \$200.00 per product is an astronomical cost requirement, and will result in an immediate downturn for hemp product sales in this state.

6. ~~§61-30-5~~ - We recommend removing this section in its entirety as it conflicts with *W. Va. Code §19-12E*. The Department is in essence requiring a "de facto license" to distribute hemp products or extracts. This is an overreach and exceeds the scope of regulatory authority granted by the West Virginia Legislature in the enabling statute.
7. ~~§61-30-9~~ - We recommend the addition of a "notice requirement" for manufacturers and retailers before they are inspected and tested by the Department.
8. ~~§61-30-10~~ - Section 10.1 expressly states that the seller is required to apply for their "license" annually. We recommend removing all references to "seller" in this section as it conflicts with *W. Va. Code §19-12E* for the reasons stated herein.

Thank you for your consideration in reading our public comments. If you have any questions or concerns, please do not hesitate to contact us. We look forward to attending the legislative rule committee hearings to address our concerns.

Very truly yours,



.....  
J. Morgan Leach  
WVHIA President  
morgan@wvhia.org

/s/ Marc Dunbar  
WVHIA Executive Director  
mdunbar6@mix.wvu.edu

# West Virginia Department of Agriculture

Kent A. Leonhardt, Commissioner  
Joseph L. Hatton, Deputy Commissioner



July 26, 2019

Karen Sims  
Kfslack89@gmail.com

Dear Ms. Sims:

Thank you for submitting public comments in response to the West Virginia Department of Agriculture's (WVDA's) proposed legislative rule, **61 C.S.R. §29, Industrial Hemp**, and **61 C.S.R. §30, Hemp Products**. All comments were reviewed by Department staff, compared to current law and practices in other jurisdictions, and considered for inclusion. Below are the responses of the Department.

**Comment:**

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Commissioner

# West Virginia Department of Agriculture

Kent A. Leonhardt, Commissioner  
Joseph L. Hatton, Deputy Commissioner



July 26, 2019

J. Morgan Leach  
WVHIA President  
[morgan@wvhia.org](mailto:morgan@wvhia.org)

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**§61-29-3.11** - We oppose this section in its entirety. *W. Va. Code §19-12E* prohibits the department from requiring a license to possess, handle, or process hemp. "Notwithstanding any provision of the code to the contrary, a person need not obtain a license to possess, handle, transport, or sell hemp products or extracts, including those containing one or more hemp-derived cannabinoids, including CBD." *W. Va. Code §19-12E-5 Industrial Hemp Licensing(f)(1)*.

#### Response:

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#### Comment:

**§61-29-3.12.b** - We oppose the requirement to re-submit background checks after three years as it is not necessary due to section 4.5. Section 3.12.b is redundant of section 4.5 that requires a licensee to report any subsequent changes to their application, including the background check. Section 4.5 achieves the same regulatory purpose that ensures the Licensee maintains a clear background check to maintain their hemp license.

#### Response:

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**Response:**

The requirement in question was added at the request of the Legislature during the 2019 Regular Session. The Department believes it is good policy for growers and possessors of raw industrial hemp to work collaboratively with law enforcement, and believes that this requirement accomplishes that purpose.

**Comment:**

§61-29-5 - We recommend the addition of model language in this section that fairly accommodates various harvesting techniques and markets for both intact flower and ground floral materials harvested from hemp.

**Response:**

The Department is awaiting final guidance from the U.S. Department of Agriculture regarding the sampling and testing protocols that will be utilized. Until that guidance is provided, the Department has chosen to utilize the current testing protocols. Those protocols require pre-harvest testing, which must be done before harvest, and necessarily cannot verify the form in which the producer will ultimately provide the material to the processor.

The Department notes that sampling and testing protocols are not explicitly laid out in its legislative rule, which allows the Department to adjust its policies based on the feedback and direction provided by the U.S. Department of Agriculture and the practices of surrounding states. The Department contends that its current pre-harvest sampling practices are in line with those utilized in large number of other states and do not put the Department outside the mainstream.

**Comment:**

§61-29-5.4 (b) - We recommend an amendment with the following language to permit duplicate sampling for third party analysis. "The sampled material shall be divided into three equal parts. One part shall be used for testing, one part shall be retained for retesting, and one part may be sent by the Department through their chain of custody protocols to a third party laboratory. Sampled material will only be sent to a third party laboratory at the request and expense of the Licensee."

**Response:**

The Department declines to adopt this policy. A licensee can collect and send a sample to a third party at the same time the Department collects its samples. Official results for required THC testing, however, are determined by the Department laboratories. Further, the Department's laboratories already split a single sample, as required by rule, into two test batches, and further divide each of those samples when performing testing, which allows for up to four tests of a sample to be performed before an adverse determination is made.

**Comment:**

§61-29-5.7 - We recommend that the Department be required to provide actual mileage incurred for inspection and sampling. If the Department goes to a single county to test multiple farms, that mileage



should be shared pro-rata between the farms that are inspected on that trip. For example, if the Department drives to a farm in Wood County for testing, they should not bill each farm in Wood County for the travel time and mileage from the Guthrie Center to their farm, but rather, the Department should aggregate the travel time and mileage driving to that county and bill each farmer that was inspected with a pro-rata share of that cost.

**Response:**

The Department concurs that the current rule language is unclear regarding actual mileage, and has submitted proposed changes to the rule to address that issue. *See* Section 5.7 (“As part of inspection and testing, each licensee shall pay actual mileage incurred, plus a charge of \$35/hour per inspector for actual drive time, ~~mileage~~, inspection and sampling time. In addition, each licensee shall pay for all actual incurred laboratory analysis testing costs that the Department considers appropriate, including retesting.”)

**Comment:**

**§61-29-6.11b** - We opposed this requirement for the same reasons set forth in comment 1 above.

**Response:**

As noted above, during the 2019 Regular Legislative Session, the Legislature explicitly authorized background checks of both initial applicants and others involved with the program. *See* W. Va. Code §19-12E-5(c) (“The commissioner shall require each first-time applicant, and may establish requirements for other persons involved with the industrial hemp program, to submit to a state and national criminal history record check.”). The Department maintains that it is sound policy, both to protect the integrity of the program and to ensure compliance with the 2018 Farm Bill, which prohibits licensure of individuals who have committed certain felonies within the preceding ten years.

**Comment:**

**§61-30** - We oppose the requirement for registering those who possess, handle, transport or sell hemp products or extracts. Rather, we recommend that registering hemp products be an “option” for retail establishments in West Virginia, as the enabling statute prohibits the department from requiring them to obtain a license as stated in *W. Va. Code §19-12E*.

**Response:**

During the 2019 Regular Legislative Session, the Legislature directed the Department to develop regulations for “[t]he production, sale, possession, handling, or transport of hemp products and extracts, including those containing one or more hemp-derived cannabinoids, including CBD.” W. Va. Code §19-12E-7(6). Further, the Department was granted broad authority by the Legislature to do so. Following a review of current regulatory structures already utilized at the Department, and a review of the manner in which other States were addressing hemp products, the Department concluded that the most effective way to fully carry out this legislative mandate was to require registration of both the products (which may come from both inside and outside the state) and the selling locations within the State of West Virginia. The Department disagrees that product and selling location registration constitutes a “de facto” licensure. Registration is a ministerial task, whereas licensure affords discretion and contemplates evaluation of credentials and eligibility. However, following discussions with stakeholders and internal discussions, and to further the goals established above, the rule was amended to include a decal or other indication that the selling location was authorized and registered, which will allow for easier regulation and reward those who are following the rules. *See* Section 5.7 (“5.7. Retail facilities that register with the Department will be provided a verification document, in the form of a certificate or otherwise, for display at the retail location, which will indicate that the retail facility is an authorized location for the sale and/or distribution of hemp products.”).

**Comment:**

§61-30-2.18 - We recommend the following amendment to this section to conform with *W. Va. Code §19-12E*.

"Licensee" means an individual or business entity possessing a license issued by the Department to grow, handle, cultivate, or process hemp. A "licensee" also means an individual or business possessing a license issued by the Department to sell and/or distribute hemp products.

**Response:**

The Department concurs in part. The second portion of the definition addresses those who are covered by the registration process, and not by the licensure covered by 61 C.S.R. § 29. The Department has created a new definition of "Registrant" to address the concerning portion of Section 2.18, and has made changes throughout the rule to correspond. The Department declines, however, to change the first portion of the definition, because it is identical to that found in *W. Va. Code §19-12E-3(i)*.

**Comment:**

§61-30-2.24 - We recommend removing this section in its entirety. This section is redundant of Section 2.13 that defines hemp, including the THC threshold. This section automatically accommodates the federal standards, allowing the Department to conform with any changes on the federal level.

**Response:**

The Department declines to make this change. The inclusion of this definition is necessary to ensure that there will not be confusion as to how THC is defined. This statement is also needed in the event that the Department need to change the way that THC is calculated, based on federal guidance.

**Comment:**

§61-30-3.1 - We recommend removing the requirement for retailers who sell hemp products to register products grown and manufactured in West Virginia. The Department will be involved in regulating the production and manufacturing of products sold in West Virginia, making these additional fees unnecessary and redundant. Section 4.1 required the manufacturer to register their products that retailers will ultimately sell. The Department should require registration for out of state products to ensure that they meet our quality control standards as they were not grown or manufactured in the state under our regulatory framework.

**Response:**

The Department disagrees. There are currently no other rules to regulate final hemp products. The WVDA needs to know what final products are on the market (regardless of the product origin). This will ensure that all hemp products, not just those manufactured outside of the state, that are on the market are safe for public use. Moreover, the Department's oversight of the production and manufacturing process (covered in 61 C.S.R. §29) addresses the process for manufacturing products, and not the content, labeling claims, or other issues related to the products themselves that are addressed by this legislative rule.

**Comment:**

§61-30-4.3 - We recommend removing this section in its entirety. Rather, we suggest that the manufacturer or retailer of a product be required to register with the Department to put the Department on notice, but not be required companies to "register" every single hemp product at \$200.00 per product.

**Response:**

The fee related to the registration of product will be used toward costs incurred by the registration specialist, compliance officer, regulatory inspectors, chemists, and microbiologists and related costs to

collect samples, determine the suitability of the product labels, and analyze the samples for a variety of different analytes. The Department is not supported fiscally by any other means for this program and will not be capable of ensuring safe hemp products and consumer safety without the fees. Moreover, in setting its fees, the Department has reviewed fee structures and costs in other states and has determined that the fees established are both necessary to support the program and reasonable compared to other jurisdictions. *See W. Va. Code §19-12E-7(4)* (permitting legislative rules to address the “[a]ssessment of fees that are commensurate with the costs of the commissioner’s activities in licensing, testing, and supervising industrial hemp production”).

**Comment:**

**§61-30-5** - We recommend removing this section in its entirety as it conflicts with *W. Va. Code §19-12E*. The Department is in essence requiring a “de facto license” to distribute hemp products or extracts. This is an overreach and exceeds the scope of regulatory authority granted by the West Virginia Legislature in the enabling statute.

**Response:**

The Department disagrees that product and selling location registration constitutes a “de facto” licensure. Registration is a ministerial task, whereas licensure affords discretion and contemplates evaluation of credentials and eligibility. However, following discussions with stakeholders and internal discussions, and to further the goals established above, the rule was amended to include a decal or other indication that the selling location was authorized and registered, which will allow for easier regulation and reward those who are following the rules. *See Section 5.7 (“5.7. Retail facilities that register with the Department will be provided a verification document, in the form of a certificate or otherwise, for display at the retail location, which will indicate that the retail facility is an authorized location for the sale and/or distribution of hemp products.”)*.

During the 2019 Regular Legislative Session, the Legislature directed the Department to develop regulations for “[t]he production, sale, possession, handling, or transport of hemp products and extracts, including those containing one or more hemp-derived cannabinoids, including CBD.” *W. Va. Code §19-12E-7(6)*. Further, the Department was granted broad authority by the Legislature to do so. Following a review of current regulatory structures already utilized at the Department, and a review of the manner in which other States were addressing hemp products, the Department concluded that the most effective way to fully carry out this legislative mandate was to require registration of both the products (which may come from both inside and outside the state) and the selling locations within the State of West Virginia.

**Comment:**

**§61-30-9** - We recommend the addition of a “notice requirement” for manufacturers and retailers before they are inspected and tested by the Department.

**Response:**

The Department disagrees with providing a notice requirement. Effective regulation requires that regulated entities not be apprised of when they will be inspected or reviewed, as the Department wants a true “snapshot” of what happens in a normal workday. Providing notice would undermine the integrity and legitimacy of the regulatory program. Moreover, the Department does not currently give notice for any other programs.

**Comment:**

**§61-30-10** - Section 10.1 expressly states that the seller is required to apply for their “license” annually. We recommend removing all references to “seller” in this section as it conflicts with *W. Va. Code §19-12E* for the reasons stated herein.

**Response:**

The Department concurs in part, and has modified section 10.1 to remove references to a "license" and replace that reference with a renewal of registration.

We appreciate your interest in these legislative rules and your participation in the public comment process, and we look forward to working with you in the future.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kent A. Leonhardt", with a long, horizontal, wavy flourish extending to the right.

Kent A. Leonhardt  
Commissioner

**Keaton, Jennifer**

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**From:** Mike Weaver <mbweav1@gmail.com>  
**Sent:** Sunday, July 21, 2019 12:36 PM  
**To:** WV Legislative Rules Comments  
**Subject:** Industrial hemp regulation changes

I am writing in regard to the proposed changes in the regulations to state that I wholeheartedly support the recommended changes submitted by West Virginia Industrial Hemp Association in their letter dated July 15, 2019.

While I understand that WVDA intends to, and should, police this fledgling industry it seems that "...too much too soon..." applies here.

My recommendation is that we allow folks to learn and get established in this new industry with as basic a regulatory scheme as possible. This will allow problem areas to be identified and evaluated for the best regulatory remedies and dealt with accordingly in the future.

The same applies to the fee schedules as proposed. Let's get established and increase or work in additional fees in a year or two, if necessary, after folks get their feet on the ground and start seeing a return on their investment.

Persons wishing to discuss these issues further or if I may be of assistance in this or other matters please contact me at 304-668-2526 or [mbweav1@gmail.com](mailto:mbweav1@gmail.com).

Thank you for your time,

Mike Weaver  
Hemp grower and farmer  
Pendleton County, WV

# West Virginia Department of Agriculture

Kent A. Leonhardt, Commissioner  
Joseph L. Hatton, Deputy Commissioner



July 26, 2019

Mike Weaver  
mbweav1@gmail.com

Dear Mr. Weaver:

Thank you for submitting public comments in response to the West Virginia Department of Agriculture's (WVDA's) proposed legislative rule, **61 C.S.R. §29, Industrial Hemp**, and **61 C.S.R. §30, Hemp Products**. All comments were reviewed by Department staff, compared to current law and practices in other jurisdictions, and considered for inclusion. Below are the responses of the Department.

**Comment:**

Your comment first expressed support for the comments submitted by the West Virginia Hemp Industry Association.

**Response:**

The Department has fully responded to the comments submitted by the West Virginia Hemp Industry Association and those responses are on file with the West Virginia Secretary of State. A copy of that response is attached.

**Comment:**

You believe the fees charged by the Department are too high for hemp products.

**Response:**

Pursuant to W. Va. Code §19-12E-7(4), the WV Legislature authorized the Department to establish legislative rules for a regulatory program and to set fees at a level that was self-sustaining. No additional appropriations were made by the WV Legislature for the hemp program, including the regulation of hemp products, making fees necessary. After reviewing the fee structures and costs in other states, the Department determined these hemp and hemp product fees are reasonable, they are in line with other states' fees, and in many cases are much lower.

The product registration fee will be used toward Department costs incurred by the registration specialist, compliance officer, regulatory inspectors, chemists, and microbiologists and related costs to collect samples, determine the suitability of the product labels, and analyze the samples for a variety of different analytes. Without the program fees, the Department will be incapable of ensuring consumer safety.

See W. Va. Code §19-12E-7(4) (permitting legislative rules to address the "[a]ssessment of fees that are commensurate with the costs of the commissioner's activities in licensing, testing, and supervising industrial hemp production").

We appreciate your interest in these legislative rules and your participation in the public comment process. We look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent A. Leonhardt", is written over a horizontal line.

Kent A. Leonhardt  
Commissioner

# West Virginia Department of Agriculture

Kent A. Leonhardt, Commissioner  
Joseph L. Hatton, Deputy Commissioner



July 26, 2019

J. Morgan Leach  
WVHIA President  
[morganj@wvhia.org](mailto:morganj@wvhia.org)

Dear Mr. Leach:

Thank you for submitting public comments in response to the West Virginia Department of Agriculture's (WVDA's) proposed legislative rule, **61 C.S.R. §29, Industrial Hemp**, and **61 C.S.R. §30, Hemp Products**. All comments were reviewed by Department staff, compared to current law and practices in other jurisdictions, and considered for inclusion. Below are the responses of the Department.

#### Comment:

**§61-29-3.11** - We oppose this section in its entirety. *W. Va. Code §19-12E* prohibits the department from requiring a license to possess, handle, or process hemp. "Notwithstanding any provision of the code to the contrary, a person need not obtain a license to possess, handle, transport, or sell hemp products or extracts, including those containing one or more hemp-derived cannabinoids, including CBD." *W. Va. Code §19-12E-5 Industrial Hemp Licensing(f)(1)*.

#### Response:

The Department disagrees with this interpretation. Licensure to grow industrial hemp is specifically required by West Virginia Code §19-12E-5(a) ("A person growing industrial hemp shall apply to the commissioner for a license on a form prescribed by the commissioner."). *See also* W. Va. Code §19-12E-7 (authorizing rulemaking for "[l]icensing persons who wish to grow, cultivate, handle, or process industrial hemp"). The language cited refers to required licensure to handle "hemp products or extracts," and not the raw hemp product.

#### Comment:

**§61-29-3.12.b** - We oppose the requirement to re-submit background checks after three years as it is not necessary due to section 4.5. Section 3.12.b is redundant of section 4.5 that requires a licensee to report any subsequent changes to their application, including the background check. Section 4.5 achieves the same regulatory purpose that ensures the Licensee maintains a clear background check to maintain their hemp license.

#### Response:

During the 2019 Regular Legislative Session, the Legislature explicitly authorized background checks of both initial applicants and others involved with the program. *See* W. Va. Code §19-12E-5(c) ("The commissioner shall require each first-time applicant, and may establish requirements for other persons involved with the industrial hemp program, to submit to a state and national criminal history record check."). The Department maintains that it is sound policy, both to protect the integrity of the program and to ensure compliance with the 2018 Farm Bill, which prohibits licensure of individuals who

have committed certain felonies within the preceding ten years.

**Comment:**

**§61-29-4.1** - We oppose the requirement for Licensees to submit a letter and their license to the County Sheriff and State Police. This purpose may be achieved by simply publishing the list of Licensees on the WV Department of Agriculture's website. This list is currently is available on the Department's website for the county Sheriffs and State Police to access.

**Response:**

The requirement in question was added at the request of the Legislature during the 2019 Regular Session. The Department believes it is good policy for growers and possessors of raw industrial hemp to work collaboratively with law enforcement, and believes that this requirement accomplishes that purpose.

**Comment:**

**§61-29-5** - We recommend the addition of model language in this section that fairly accommodates various harvesting techniques and markets for both intact flower and ground floral materials harvested from hemp.

**Response:**

The Department is awaiting final guidance from the U.S. Department of Agriculture regarding the sampling and testing protocols that will be utilized. Until that guidance is provided, the Department has chosen to utilize the current testing protocols. Those protocols require pre-harvest testing, which must be done before harvest, and necessarily cannot verify the form in which the producer will ultimately provide the material to the processor.

The Department notes that sampling and testing protocols are not explicitly laid out in its legislative rule, which allows the Department to adjust its policies based on the feedback and direction provided by the U.S. Department of Agriculture and the practices of surrounding states. The Department contends that its current pre-harvest sampling practices are in line with those utilized in large number of other states and do not put the Department outside the mainstream.

**Comment:**

**§61-29-5.4 (b)** - We recommend an amendment with the following language to permit duplicate sampling for third party analysis. "The sampled material shall be divided into three equal parts. One part shall be used for testing, one part shall be retained for retesting, and one part may be sent by the Department through their chain of custody protocols to a third party laboratory. Sampled material will only be sent to a third party laboratory at the request and expense of the Licensee."

**Response:**

The Department declines to adopt this policy. A licensee can collect and send a sample to a third party at the same time the Department collects its samples. Official results for required THC testing, however, are determined by the Department laboratories. Further, the Department's laboratories already split a single sample, as required by rule, into two test batches, and further divide each of those samples when performing testing, which allows for up to four tests of a sample to be performed before an adverse determination is made.

**Comment:**

**§61-29-5.7** - We recommend that the Department be required to provide actual mileage incurred for inspection and sampling. If the Department goes to a single county to test multiple farms, that mileage



should be shared pro-rata between the farms that are inspected on that trip. For example, if the Department drives to a farm in Wood County for testing, they should not bill each farm in Wood County for the travel time and mileage from the Guthrie Center to their farm, but rather, the Department should aggregate the travel time and mileage driving to that county and bill each farmer that was inspected with a pro-rata share of that cost.

**Response:**

The Department concurs that the current rule language is unclear regarding actual mileage, and has submitted proposed changes to the rule to address that issue. *See* Section 5.7 (“As part of inspection and testing, each licensee shall pay actual mileage incurred, plus a charge of \$35/hour per inspector for actual drive time, mileage, inspection and sampling time. In addition, each licensee shall pay for all actual incurred laboratory analysis testing costs that the Department considers appropriate, including retesting.”)

**Comment:**

**§61-29-6.11b** - We opposed this requirement for the same reasons set forth in comment 1 above.

**Response:**

As noted above, during the 2019 Regular Legislative Session, the Legislature explicitly authorized background checks of both initial applicants and others involved with the program. *See* W. Va. Code §19-12E-5(c) (“The commissioner shall require each first-time applicant, and may establish requirements for other persons involved with the industrial hemp program, to submit to a state and national criminal history record check.”). The Department maintains that it is sound policy, both to protect the integrity of the program and to ensure compliance with the 2018 Farm Bill, which prohibits licensure of individuals who have committed certain felonies within the preceding ten years.

**Comment:**

**§61-30** - We oppose the requirement for registering those who possess, handle, transport or sell hemp products or extracts. Rather, we recommend that registering hemp products be an “option” for retail establishments in West Virginia, as the enabling statute prohibits the department from requiring them to obtain a license as stated in *W. Va. Code §19-12E*.

**Response:**

During the 2019 Regular Legislative Session, the Legislature directed the Department to develop regulations for “[t]he production, sale, possession, handling, or transport of hemp products and extracts, including those containing one or more hemp-derived cannabinoids, including CBD.” W. Va. Code §19-12E-7(6). Further, the Department was granted broad authority by the Legislature to do so. Following a review of current regulatory structures already utilized at the Department, and a review of the manner in which other States were addressing hemp products, the Department concluded that the most effective way to fully carry out this legislative mandate was to require registration of both the products (which may come from both inside and outside the state) and the selling locations within the State of West Virginia. The Department disagrees that product and selling location registration constitutes a “de facto” licensure. Registration is a ministerial task, whereas licensure affords discretion and contemplates evaluation of credentials and eligibility. However, following discussions with stakeholders and internal discussions, and to further the goals established above, the rule was amended to include a decal or other indication that the selling location was authorized and registered, which will allow for easier regulation and reward those who are following the rules. *See* Section 5.7 (“5.7. Retail facilities that register with the Department will be provided a verification document, in the form of a certificate or otherwise, for display at the retail location, which will indicate that the retail facility is an authorized location for the sale and/or distribution of hemp products.”).

**Comment:**

**§61-30-2.18** - We recommend the following amendment to this section to conform with *W. Va. Code §19-12E*.

"Licensee" means an individual or business entity possessing a license issued by the Department to grow, handle, cultivate, or process hemp. A "licensee" also means an individual or business possessing a license issued by the Department to sell and/or distribute hemp products.

**Response:**

The Department concurs in part. The second portion of the definition addresses those who are covered by the registration process, and not by the licensure covered by 61 C.S.R. § 29. The Department has created a new definition of "Registrant" to address the concerning portion of Section 2.18, and has made changes throughout the rule to correspond. The Department declines, however, to change the first portion of the definition, because it is identical to that found in W. Va. Code §19-12E-3(i).

**Comment:**

**§61-30-2.24** - We recommend removing this section in its entirety. This section is redundant of Section 2.13 that defines hemp, including the THC threshold. This section automatically accommodates the federal standards, allowing the Department to conform with any changes on the federal level.

**Response:**

The Department declines to make this change. The inclusion of this definition is necessary to ensure that there will not be confusion as to how THC is defined. This statement is also needed in the event that the Department need to change the way that THC is calculated, based on federal guidance.

**Comment:**

**§61-30-3.1** - We recommend removing the requirement for retailers who sell hemp products to register products grown and manufactured in West Virginia. The Department will be involved in regulating the production and manufacturing of products sold in West Virginia, making these additional fees unnecessary and redundant. Section 4.1 required the manufacturer to register their products that retailers will ultimately sell. The Department should require registration for out of state products to ensure that they meet our quality control standards as they were not grown or manufactured in the state under our regulatory framework.

**Response:**

The Department disagrees. There are currently no other rules to regulate final hemp products. The WVDA needs to know what final products are on the market (regardless of the product origin). This will ensure that all hemp products, not just those manufactured outside of the state, that are on the market are safe for public use. Moreover, the Department's oversight of the production and manufacturing process (covered in 61 C.S.R. §29) addresses the process for manufacturing products, and not the content, labeling claims, or other issues related to the products themselves that are addressed by this legislative rule.

**Comment:**

**§61-30-4.3** - We recommend removing this section in its entirety. Rather, we suggest that the manufacturer or retailer of a product be required to register with the Department to put the Department on notice, but not be required companies to "register" every single hemp product at \$200.00 per product.

**Response:**

The fee related to the registration of product will be used toward costs incurred by the registration specialist, compliance officer, regulatory inspectors, chemists, and microbiologists and related costs to

collect samples, determine the suitability of the product labels, and analyze the samples for a variety of different analytes. The Department is not supported fiscally by any other means for this program and will not be capable of ensuring safe hemp products and consumer safety without the fees. Moreover, in setting its fees, the Department has reviewed fee structures and costs in other states and has determined that the fees established are both necessary to support the program and reasonable compared to other jurisdictions. See W. Va. Code §19-12E-7(4) (permitting legislative rules to address the “[a]ssessment of fees that are commensurate with the costs of the commissioner’s activities in licensing, testing, and supervising industrial hemp production”).

**Comment:**

§61-30-5 - We recommend removing this section in its entirety as it conflicts with *W. Va. Code §19-12E*. The Department is in essence requiring a “de facto license” to distribute hemp products or extracts. This is an overreach and exceeds the scope of regulatory authority granted by the West Virginia Legislature in the enabling statute.

**Response:**

The Department disagrees that product and selling location registration constitutes a “de facto” licensure. Registration is a ministerial task, whereas licensure affords discretion and contemplates evaluation of credentials and eligibility. However, following discussions with stakeholders and internal discussions, and to further the goals established above, the rule was amended to include a decal or other indication that the selling location was authorized and registered, which will allow for easier regulation and reward those who are following the rules. See Section 5.7 (“5.7. Retail facilities that register with the Department will be provided a verification document, in the form of a certificate or otherwise, for display at the retail location, which will indicate that the retail facility is an authorized location for the sale and/or distribution of hemp products.”).

During the 2019 Regular Legislative Session, the Legislature directed the Department to develop regulations for “[t]he production, sale, possession, handling, or transport of hemp products and extracts, including those containing one or more hemp-derived cannabinoids, including CBD.” W. Va. Code §19-12E-7(6). Further, the Department was granted broad authority by the Legislature to do so. Following a review of current regulatory structures already utilized at the Department, and a review of the manner in which other States were addressing hemp products, the Department concluded that the most effective way to fully carry out this legislative mandate was to require registration of both the products (which may come from both inside and outside the state) and the selling locations within the State of West Virginia.

**Comment:**

§61-30-9 - We recommend the addition of a “notice requirement” for manufacturers and retailers before they are inspected and tested by the Department.

**Response:**

The Department disagrees with providing a notice requirement. Effective regulation requires that regulated entities not be apprised of when they will be inspected or reviewed, as the Department wants a true “snapshot” of what happens in a normal workday. Providing notice would undermine the integrity and legitimacy of the regulatory program. Moreover, the Department does not currently give notice for any other programs.

**Comment:**

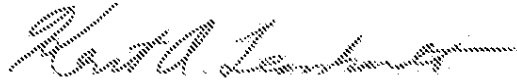
§61-30-10 - Section 10.1 expressly states that the seller is required to apply for their “license” annually. We recommend removing all references to “seller” in this section as it conflicts with *W. Va. Code §19-12E* for the reasons stated herein.

**Response:**

The Department concurs in part, and has modified section 10.1 to remove references to a "license" and replace that reference with a renewal of registration.

We appreciate your interest in these legislative rules and your participation in the public comment process, and we look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent A. Leonhardt", written over a horizontal line.

Kent A. Leonhardt  
Commissioner

**Keaton, Jennifer**

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**From:** Sarah Kendall <skendallus@suddenlink.net>  
**Sent:** Monday, July 22, 2019 5:31 PM  
**To:** WV Legislative Rules Comments  
**Cc:** 'J. Morgan Leach'; 'Chuck Romanoli'; 'Ron Brunt'  
**Subject:** TITLE SERIES 61-29 AND 61-30

Ms. Birchfield, I endorse the views expressed below, that are held by the WV Hemp Industries Association. These suggested and needed changes are critical to the supporting WV hemp farmers and related West Virginia Hemp industries. Please incorporate these changes to facilitate success of WV hemp farmers and businesses, and in turn WV as a whole.

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WV Hemp Industries Association  
902 29th St. Vienna,  
West Virginia 26105  
wvhia.org

July 15, 2019

Madison Birchfield  
West Virginia Department of Agriculture  
1900 Kanawha Blvd. East, Room E-28  
Charleston, West Virginia, 25305-0170  
rulescomments@wvda.us  
VIA EMAIL ONLY

RE: PUBLIC COMMENTS FOR TITLE SERIES 61-29 AND 61-30

Ms. Birchfield:

Please see the following public comments to the above referenced legislative rule amendments.

TITLE SERIES 61-29

1. §61-29-3.11 - We oppose this section in its entirety. W. Va. Code §19-12E prohibits the department from requiring a license to possess, handle, or process hemp.  
"Notwithstanding any provision of the code to the contrary, a person need not obtain a license to possess, handle, transport, or sell hemp products or extracts, including those containing one or more hemp-derived cannabinoids, including CBD." W. Va. Code §19-12E-5 Industrial Hemp Licensing (f) (1).
2. §61-29-3.12.b - We oppose the requirement to re-submit background checks after three years as it is not necessary due to section 4.5. Section 3.12.b is redundant of section 4.5 that requires a licensee to report any subsequent changes to their application, including the background check. Section 4.5 achieves the same regulatory purpose that ensures the Licensee maintains a clear background check to maintain their hemp license.
3. §61-29-4.1 - We oppose the requirement for Licensees to submit a letter and their license to the County Sheriff and State Police. This purpose may be achieved by simply publishing the list of Licensees on the WV Department of Agriculture's website. This list is currently is available on the Department's website for the county Sheriffs and State Police to access.

4. §61-29-5 - We recommend the addition of model language in this section that fairly accommodates various harvesting techniques and markets for both intact flower and ground floral materials harvested from hemp.

"All pre-harvest samples of floral material shall be taken from the designated harvested plot materials in the form (intact plant, flowers, ground materials, etc.) in which the material will be sent to the processor. An inspector must require the licensee to harvest and market the entire crop in the form in which it was tested by the Department."

For intact-plant samples:

1. Ensure that the entire harvest is accounted for and in the same form (i.e., intact-plants).
2. Clip the top 20 cm of hemp plant, primary stem, including leaf and female floral material.

For ground plant or ground floral material samples:

1. Ensure that the entire harvest is accounted for and in the same form (i.e., all harvested material whether whole plant or floral material only must be ground with no intact plants or whole flowers remaining from that harvest).
2. Sample material from bag or container that is collected from four separate areas in the field from which the material is harvested.

5. §61-29-5.4 (b) - We recommend an amendment with the following language to permit duplicate sampling for third party analysis.

"The sampled material shall be divided into three equal parts. One part shall be used for testing, one part shall be retained for retesting, and one part may be sent by the Department through their chain of custody protocols to a third party laboratory. Sampled material will only be sent to a third party laboratory at the request and expense of the Licensee."

6. §61-29-5.7 - We recommend that the Department be required to provide actual mileage incurred for inspection and sampling. If the Department goes to a single county to test multiple farms, that mileage should be shared pro-rata between the farms that are inspected on that trip. For example, if the Department drives to a farm in Wood County for testing, they should not bill each farm in Wood County for the travel time and mileage from the Guthrie Center to their farm, but rather, the Department should aggregate the travel time and mileage driving to that county and bill each farmer that was inspected with a pro-rata share of that cost.

7. §61-29-6.11b - We opposed this requirement for the same reasons set forth in comment 1 above.

#### TITLE SERIES 61-30

1. §61-30 - We oppose the requirement for registering those who possess, handle, transport or sell hemp products or extracts. Rather, we recommend that registering hemp products be an "option" for retail establishments in West Virginia, as the enabling statute prohibits the department from requiring them to obtain a license as stated in W. Va. Code §19-12E.

"Notwithstanding any provision of the code to the contrary, a person need not obtain a license to possess, handle, transport, or sell hemp products or extracts, including those containing one or more hemp-derived cannabinoids, including CBD." W. Va. Code §19-12E-5 Industrial Hemp Licensing (f) (1).

Rationale: The Department's proposed rule is creating a "de facto license" for hemp retailers to sell products, which is contrary to statute. If this, however, where an "option" for a retailer to gain Department inspection and approval, this would create a competitive

quality standard for products sold in West Virginia. This registration would then inform the consumer as to the quality of the products would and provide retailers an incentive to register their products with the Department and advertise approved products to gain an advantage in the marketplace.

In the alternative, we advocate for the following amendments to Title Series 61-30:

2. §61-30-2.18 - We recommend the following amendment to this section to conform with W. Va. Code §19-12E.

“Licensee” means an individual or business entity possessing a license issued by the Department to grow, handle, cultivate, or process hemp. A “licensee” also means an individual or business possessing a license issued by the Department to sell and/or distribute hemp products.

3. §61-30-2.24 - We recommend removing this section in its entirety. This section is redundant of Section 2.13 that defines hemp, including the THC threshold. This section automatically accommodates the federal standards, allowing the Department to conform with any changes on the federal level.

4. §61-30-3.1 - We recommend removing the requirement for retailers who sell hemp products to register products grown and manufactured in West Virginia. The Department will be involved in regulating the production and manufacturing of products sold in West Virginia, making these additional fees unnecessary and redundant. Section 4.1 required the manufacturer to register their products that retailers will ultimately sell. The Department should require registration for out of state products to ensure that they meet our quality control standards as they were not grown or manufactured in the state under our regulatory framework.

5. §61-30-4.3 - We recommend removing this section in its entirety. Rather, we suggest that the manufacturer or retailer of a product be required to register with the Department to put the Department on notice, but not be required companies to “register” every single hemp product at \$200.00 per product.

Rationale: The regulatory cost is overly burdensome and will result in a cost prohibitive regulation for manufacturers and retailers. This will make products grown and manufactured in this state unable to compete with products that are produced in other states with fewer regulatory costs. Requiring a registration fee of \$200.00 per product is an astronomical cost requirement, and will result in an immediate downturn for hemp product sales in this state.

6. §61-30-5 - We recommend removing this section in its entirety as it conflicts with W. Va. Code §19-12E. The Department is in essence requiring a “de facto license” to distribute hemp products or extracts. This is an overreach and exceeds the scope of regulatory authority granted by the West Virginia Legislature in the enabling statute.

7. §61-30-9 - We recommend the addition of a “notice requirement” for manufacturers and retailers before they are inspected and tested by the Department.

8. §61-30-10 - Section 10.1 expressly states that the seller is required to apply for their “license” annually. We recommend removing all references to “seller” in this section as it conflicts with W. Va. Code §19-12E for the reasons stated herein.

Thank you for your consideration in reading our public comments. If you have any questions or concerns, please do not hesitate to contact us. We look forward to attending the legislative rule committee hearings to address our concerns.

Very truly yours,

.....  
J. Morgan Leach

WVHIA President  
morgan@wvhia.org  
/s/ Marc Dunbar  
WVHIA Executive Director  
mdunbar6@mix.wvu.edu



# West Virginia Department of Agriculture

Kent A. Leonhardt, Commissioner  
Joseph L. Hatton, Deputy Commissioner



July 26, 2019

Sarah Kendall  
skendallus@suddenlink.net

Dear Ms. Kendall:

Thank you for submitting public comments in response to the West Virginia Department of Agriculture's (WVDA's) proposed legislative rule, **61 C.S.R. §29, Industrial Hemp**, and **61 C.S.R. §30, Hemp Products**. All comments were reviewed by Department staff, compared to current law and practices in other jurisdictions, and considered for inclusion. Below are the responses of the Department.

**Comment:**

Your comment expressed support for the comments submitted by the West Virginia Hemp Industry Association.

**Response:**

The Department has fully responded to the comments submitted by the West Virginia Hemp Industry Association and those responses are on file with the West Virginia Secretary of State. A copy of that response is attached.

We appreciate your interest in these legislative rules and your participation in the public comment process. We look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent A. Leonhardt", is written over a horizontal line.

Kent A. Leonhardt  
Commissioner

# West Virginia Department of Agriculture

Kent A. Leonhardt, Commissioner  
Joseph L. Hatton, Deputy Commissioner



July 26, 2019

J. Morgan Leach  
WVHIA President  
[morgan@wvhia.org](mailto:morgan@wvhia.org)

Dear Mr. Leach:

Thank you for submitting public comments in response to the West Virginia Department of Agriculture's (WVDA's) proposed legislative rule, **61 C.S.R. §29, Industrial Hemp**, and **61 C.S.R. §30, Hemp Products**. All comments were reviewed by Department staff, compared to current law and practices in other jurisdictions, and considered for inclusion. Below are the responses of the Department.

**Comment:**

**§61-29-3.11** - We oppose this section in its entirety. *W. Va. Code §19-12E* prohibits the department from requiring a license to possess, handle, or process hemp. "Notwithstanding any provision of the code to the contrary, a person need not obtain a license to possess, handle, transport, or sell hemp products or extracts, including those containing one or more hemp-derived cannabinoids, including CBD." *W. Va. Code §19-12E-5 Industrial Hemp Licensing(f)(1)*.

**Response:**

The Department disagrees with this interpretation. Licensure to grow industrial hemp is specifically required by West Virginia Code §19-12E-5(a) ("A person growing industrial hemp shall apply to the commissioner for a license on a form prescribed by the commissioner."). *See also* W. Va. Code §19-12E-7 (authorizing rulemaking for "[l]icensing persons who wish to grow, cultivate, handle, or process industrial hemp"). The language cited refers to required licensure to handle "hemp products or extracts," and not the raw hemp product.

**Comment:**

**§61-29-3.12.b** - We oppose the requirement to re-submit background checks after three years as it is not necessary due to section 4.5. Section 3.12.b is redundant of section 4.5 that requires a licensee to report any subsequent changes to their application, including the background check. Section 4.5 achieves the same regulatory purpose that ensures the Licensee maintains a clear background check to maintain their hemp license.

**Response:**

During the 2019 Regular Legislative Session, the Legislature explicitly authorized background checks of both initial applicants and others involved with the program. *See* W. Va. Code §19-12E-5(c) ("The commissioner shall require each first-time applicant, and may establish requirements for other persons involved with the industrial hemp program, to submit to a state and national criminal history record check."). The Department maintains that it is sound policy, both to protect the integrity of the program and to ensure compliance with the 2018 Farm Bill, which prohibits licensure of individuals who

have committed certain felonies within the preceding ten years.

**Comment:**

§61-29-4.1 - We oppose the requirement for Licensees to submit a letter and their license to the County Sheriff and State Police. This purpose may be achieved by simply publishing the list of Licensees on the WV Department of Agriculture's website. This list is currently is available on the Department's website for the county Sheriffs and State Police to access.

**Response:**

The requirement in question was added at the request of the Legislature during the 2019 Regular Session. The Department believes it is good policy for growers and possessors of raw industrial hemp to work collaboratively with law enforcement, and believes that this requirement accomplishes that purpose.

**Comment:**

§61-29-5 - We recommend the addition of model language in this section that fairly accommodates various harvesting techniques and markets for both intact flower and ground floral materials harvested from hemp.

**Response:**

The Department is awaiting final guidance from the U.S. Department of Agriculture regarding the sampling and testing protocols that will be utilized. Until that guidance is provided, the Department has chosen to utilize the current testing protocols. Those protocols require pre-harvest testing, which must be done before harvest, and necessarily cannot verify the form in which the producer will ultimately provide the material to the processor.

The Department notes that sampling and testing protocols are not explicitly laid out in its legislative rule, which allows the Department to adjust its policies based on the feedback and direction provided by the U.S. Department of Agriculture and the practices of surrounding states. The Department contends that its current pre-harvest sampling practices are in line with those utilized in large number of other states and do not put the Department outside the mainstream.

**Comment:**

§61-29-5.4 (b) - We recommend an amendment with the following language to permit duplicate sampling for third party analysis. "The sampled material shall be divided into three equal parts. One part shall be used for testing, one part shall be retained for retesting, and one part may be sent by the Department through their chain of custody protocols to a third party laboratory. Sampled material will only be sent to a third party laboratory at the request and expense of the Licensee."

**Response:**

The Department declines to adopt this policy. A licensee can collect and send a sample to a third party at the same time the Department collects its samples. Official results for required THC testing, however, are determined by the Department laboratories. Further, the Department's laboratories already split a single sample, as required by rule, into two test batches, and further divide each of those samples when performing testing, which allows for up to four tests of a sample to be performed before an adverse determination is made.

**Comment:**

§61-29-5.7 - We recommend that the Department be required to provide actual mileage incurred for inspection and sampling. If the Department goes to a single county to test multiple farms, that mileage

should be shared pro-rata between the farms that are inspected on that trip. For example, if the Department drives to a farm in Wood County for testing, they should not bill each farm in Wood County for the travel time and mileage from the Guthrie Center to their farm, but rather, the Department should aggregate the travel time and mileage driving to that county and bill each farmer that was inspected with a pro-rata share of that cost.

**Response:**

The Department concurs that the current rule language is unclear regarding actual mileage, and has submitted proposed changes to the rule to address that issue. *See* Section 5.7 (“As part of inspection and testing, each licensee shall pay actual mileage incurred, plus a charge of \$35/hour per inspector for actual drive time, mileage, inspection and sampling time. In addition, each licensee shall pay for all actual incurred laboratory analysis testing costs that the Department considers appropriate, including retesting.”)

**Comment:**

**§61-29-6.11b** - We opposed this requirement for the same reasons set forth in comment 1 above.

**Response:**

As noted above, during the 2019 Regular Legislative Session, the Legislature explicitly authorized background checks of both initial applicants and others involved with the program. *See* W. Va. Code §19-12E-5(c) (“The commissioner shall require each first-time applicant, and may establish requirements for other persons involved with the industrial hemp program, to submit to a state and national criminal history record check.”). The Department maintains that it is sound policy, both to protect the integrity of the program and to ensure compliance with the 2018 Farm Bill, which prohibits licensure of individuals who have committed certain felonies within the preceding ten years.

**Comment:**

**§61-30** - We oppose the requirement for registering those who possess, handle, transport or sell hemp products or extracts. Rather, we recommend that registering hemp products be an “option” for retail establishments in West Virginia, as the enabling statute prohibits the department from requiring them to obtain a license as stated in *W. Va. Code §19-12E*.

**Response:**

During the 2019 Regular Legislative Session, the Legislature directed the Department to develop regulations for “[t]he production, sale, possession, handling, or transport of hemp products and extracts, including those containing one or more hemp-derived cannabinoids, including CBD.” W. Va. Code §19-12E-7(6). Further, the Department was granted broad authority by the Legislature to do so. Following a review of current regulatory structures already utilized at the Department, and a review of the manner in which other States were addressing hemp products, the Department concluded that the most effective way to fully carry out this legislative mandate was to require registration of both the products (which may come from both inside and outside the state) and the selling locations within the State of West Virginia. The Department disagrees that product and selling location registration constitutes a “de facto” licensure. Registration is a ministerial task, whereas licensure affords discretion and contemplates evaluation of credentials and eligibility. However, following discussions with stakeholders and internal discussions, and to further the goals established above, the rule was amended to include a decal or other indication that the selling location was authorized and registered, which will allow for easier regulation and reward those who are following the rules. *See* Section 5.7 (“5.7. Retail facilities that register with the Department will be provided a verification document, in the form of a certificate or otherwise, for display at the retail location, which will indicate that the retail facility is an authorized location for the sale and/or distribution of hemp products.”).

**Comment:**

**§61-30-2.18** - We recommend the following amendment to this section to conform with *W. Va. Code §19-12E*.

"Licensee" means an individual or business entity possessing a license issued by the Department to grow, handle, cultivate, or process hemp. A "licensee" also means an individual or business possessing a license issued by the Department to sell and/or distribute hemp products.

**Response:**

The Department concurs in part. The second portion of the definition addresses those who are covered by the registration process, and not by the licensure covered by 61 C.S.R. § 29. The Department has created a new definition of "Registrant" to address the concerning portion of Section 2.18, and has made changes throughout the rule to correspond. The Department declines, however, to change the first portion of the definition, because it is identical to that found in W. Va. Code §19-12E-3(i).

**Comment:**

**§61-30-2.24** - We recommend removing this section in its entirety. This section is redundant of Section 2.13 that defines hemp, including the THC threshold. This section automatically accommodates the federal standards, allowing the Department to conform with any changes on the federal level.

**Response:**

The Department declines to make this change. The inclusion of this definition is necessary to ensure that there will not be confusion as to how THC is defined. This statement is also needed in the event that the Department need to change the way that THC is calculated, based on federal guidance.

**Comment:**

**§61-30-3.1** - We recommend removing the requirement for retailers who sell hemp products to register products grown and manufactured in West Virginia. The Department will be involved in regulating the production and manufacturing of products sold in West Virginia, making these additional fees unnecessary and redundant. Section 4.1 required the manufacturer to register their products that retailers will ultimately sell. The Department should require registration for out of state products to ensure that they meet our quality control standards as they were not grown or manufactured in the state under our regulatory framework.

**Response:**

The Department disagrees. There are currently no other rules to regulate final hemp products. The WVDA needs to know what final products are on the market (regardless of the product origin). This will ensure that all hemp products, not just those manufactured outside of the state, that are on the market are safe for public use. Moreover, the Department's oversight of the production and manufacturing process (covered in 61 C.S.R. §29) addresses the process for manufacturing products, and not the content, labeling claims, or other issues related to the products themselves that are addressed by this legislative rule.

**Comment:**

**§61-30-4.3** - We recommend removing this section in its entirety. Rather, we suggest that the manufacturer or retailer of a product be required to register with the Department to put the Department on notice, but not be required companies to "register" every single hemp product at \$200.00 per product.

**Response:**

The fee related to the registration of product will be used toward costs incurred by the registration specialist, compliance officer, regulatory inspectors, chemists, and microbiologists and related costs to

collect samples, determine the suitability of the product labels, and analyze the samples for a variety of different analytes. The Department is not supported fiscally by any other means for this program and will not be capable of ensuring safe hemp products and consumer safety without the fees. Moreover, in setting its fees, the Department has reviewed fee structures and costs in other states and has determined that the fees established are both necessary to support the program and reasonable compared to other jurisdictions. *See W. Va. Code §19-12E-7(4)* (permitting legislative rules to address the “[a]ssessment of fees that are commensurate with the costs of the commissioner’s activities in licensing, testing, and supervising industrial hemp production”).

**Comment:**

**§61-30-5** - We recommend removing this section in its entirety as it conflicts with *W. Va. Code §19-12E*. The Department is in essence requiring a “de facto license” to distribute hemp products or extracts. This is an overreach and exceeds the scope of regulatory authority granted by the West Virginia Legislature in the enabling statute.

**Response:**

The Department disagrees that product and selling location registration constitutes a “de facto” licensure. Registration is a ministerial task, whereas licensure affords discretion and contemplates evaluation of credentials and eligibility. However, following discussions with stakeholders and internal discussions, and to further the goals established above, the rule was amended to include a decal or other indication that the selling location was authorized and registered, which will allow for easier regulation and reward those who are following the rules. *See Section 5.7 (“5.7. Retail facilities that register with the Department will be provided a verification document, in the form of a certificate or otherwise, for display at the retail location, which will indicate that the retail facility is an authorized location for the sale and/or distribution of hemp products.”)*.

During the 2019 Regular Legislative Session, the Legislature directed the Department to develop regulations for “[t]he production, sale, possession, handling, or transport of hemp products and extracts, including those containing one or more hemp-derived cannabinoids, including CBD.” *W. Va. Code §19-12E-7(6)*. Further, the Department was granted broad authority by the Legislature to do so. Following a review of current regulatory structures already utilized at the Department, and a review of the manner in which other States were addressing hemp products, the Department concluded that the most effective way to fully carry out this legislative mandate was to require registration of both the products (which may come from both inside and outside the state) and the selling locations within the State of West Virginia.

**Comment:**

**§61-30-9** - We recommend the addition of a “notice requirement” for manufacturers and retailers before they are inspected and tested by the Department.

**Response:**

The Department disagrees with providing a notice requirement. Effective regulation requires that regulated entities be apprised of when they will be inspected or reviewed, as the Department wants a true “snapshot” of what happens in a normal workday. Providing notice would undermine the integrity and legitimacy of the regulatory program. Moreover, the Department does not currently give notice for any other programs.

**Comment:**

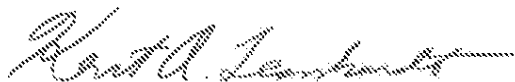
**§61-30-10** - Section 10.1 expressly states that the seller is required to apply for their “license” annually. We recommend removing all references to “seller” in this section as it conflicts with *W. Va. Code §19-12E* for the reasons stated herein.

**Response:**

The Department concurs in part, and has modified section 10.1 to remove references to a "license" and replace that reference with a renewal of registration.

We appreciate your interest in these legislative rules and your participation in the public comment process, and we look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent A. Leonhardt", with a stylized, flowing script.

Kent A. Leonhardt  
Commissioner

**Keaton, Jennifer**

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**From:** WV Legislative Rules Comments  
**Subject:** FW: Public Comment to Rules 61-29 and 61-30

**From:** morgan@wvhia.org <morgan@wvhia.org>  
**Sent:** Monday, July 15, 2019 4:22 PM  
**To:** WV Legislative Rules Comments <rulescomments@wvda.us>  
**Cc:** mdunbar6@mix.wvu.edu  
**Subject:** Public Comment to Rules 61-29 and 61-30

To whom it may concern:

Please be advised of and confirm receipt of the Public Comment to Rules 61-29 and 61-30 attached to this email.

If you have any questions or concerns, please do not hesitate to contact me.

Best,

J. Morgan Leach  
WVHIA President  
(304) 834 - 2822





West Virginia Hemp  
Industries Association  
902 29th St. Vienna,  
West Virginia 26105  
wvhia.org

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July 15, 2019

Madison Birchfield  
West Virginia Department of Agriculture  
1900 Kanawha Blvd. East, Room E-28  
Charleston, West Virginia, 25305-0170  
[rulescomments@wvda.us](mailto:rulescomments@wvda.us)  
VIA EMAIL ONLY

**RE: PUBLIC COMMENTS FOR TITLE SERIES 61-29 AND 61-30**

Ms. Birchfield:

Please see the following public comments to the above referenced legislative rule amendments.

**TITLE SERIES 61-29**

1. ~~§61-29-3.11~~ - We oppose this section in its entirety. *W. Va. Code §19-12E* prohibits the department from requiring a license to possess, handle, or process hemp.

“Notwithstanding any provision of the code to the contrary, a person ~~need not obtain a license to possess, handle, transport, or sell hemp products or extracts~~, including those containing one or more hemp-derived cannabinoids, including CBD.” *W. Va. Code §19-12E-5 Industrial Hemp Licensing (f) (1)*.

2. ~~§61-29-3.12.b~~ - We oppose the requirement to re-submit background checks after three years as it is not necessary due to section 4.5. Section 3.12.b is redundant of section 4.5 that requires a licensee to report any subsequent changes to their application, including the background check. Section 4.5 achieves the same regulatory purpose that ensures the Licensee maintains a clear background check to maintain their hemp license.
3. ~~§61-29-4.1~~ - We oppose the requirement for Licensees to submit a letter and their license to the County Sheriff and State Police. This purpose may be achieved by simply publishing the list of Licensees on the WV Department of Agriculture’s website. This list is currently is available on the Department’s website for the county Sheriffs and State Police to access.

4. ~~§61-29-5~~ - We recommend the addition of model language in this section that fairly accommodates various harvesting techniques and markets for both intact flower and ground floral materials harvested from hemp.

"All pre-harvest samples of floral material shall be taken from the designated harvested plot materials in the form (intact plant, flowers, ground materials, etc.) in which the material will be sent to the processor. An inspector must require the licensee to harvest and market the entire crop in the form in which it was tested by the Department."

**For intact-plant samples:**

1. Ensure that the entire harvest is accounted for and in the same form (i.e., intact-plants).
2. Clip the top 20 cm of hemp plant, primary stem, including leaf and female floral material.

**For ground plant or ground floral material samples:**

1. Ensure that the entire harvest is accounted for and in the same form (i.e., all harvested material whether whole plant or floral material only must be ground with no intact plants or whole flowers remaining from that harvest).
2. Sample material from bag or container that is collected from four separate areas in the field from which the material is harvested.

5. ~~§61-29-5.4(b)~~ - We recommend an amendment with the following language to permit duplicate sampling for third party analysis.

"The sampled material shall be divided into three equal parts. One part shall be used for testing, one part shall be retained for retesting, and one part may be sent by the Department through their chain of custody protocols to a third party laboratory. Sampled material will only be sent to a third party laboratory at the request and expense of the Licensee."

6. ~~§61-29-5.7~~ - We recommend that the Department be required to provide actual mileage incurred for inspection and sampling. If the Department goes to a single county to test multiple farms, that mileage should be shared pro-rata between the farms that are inspected on that trip. For example, if the Department drives to a farm in Wood County for testing, they should not bill each farm in Wood County for the travel time and mileage from the Guthrie Center to their farm, but rather, the Department should aggregate the travel time and mileage driving to that county and bill each farmer that was inspected with a pro-rata share of that cost.
7. ~~§61-29-6.11b~~ - We opposed this requirement for the same reasons set forth in comment 1 above.

## TITLE SERIES 61-39

1. ~~§61-39~~ - We oppose the requirement for registering those who possess, handle, transport or sell hemp products or extracts. Rather, we recommend that registering hemp products be an "option" for retail establishments in West Virginia, as the enabling statute prohibits the department from requiring them to obtain a license as stated in *W. Va. Code §19-12E*.

"Notwithstanding any provision of the code to the contrary, a person ~~need not obtain a license to possess, handle, transport, or sell hemp products or extracts~~, including those containing one or more hemp-derived cannabinoids, including CBD." *W. Va. Code §19-12E-5 Industrial Hemp Licensing (f) (1)*.

**Rationale:** The Department's proposed rule is creating a "*de facto license*" for hemp retailers to sell products, which is contrary to statute. If this, however, where an "option" for a retailer to gain Department inspection and approval, this would create a competitive quality standard for products sold in West Virginia. This registration would then inform the consumer as to the quality of the products would and provide retailers an incentive to register their products with the Department and advertise approved products to gain an advantage in the marketplace.

### In the alternative, we advocate for the following amendments to Title Series 61-39:

2. ~~§61-39-2.18~~ - We recommend the following amendment to this section to conform with *W. Va. Code §19-12E*.

"Licensee" means an individual or business entity possessing a license issued by the Department to grow, ~~handle~~, cultivate, or process hemp. A "~~licensee~~" also means an individual or business possessing a license issued by the Department to ~~sell and/or distribute hemp products~~.

3. ~~§61-39-2.24~~ - We recommend removing this section in its entirety. This section is redundant of Section 2.13 that defines hemp, including the THC threshold. This section automatically accommodates the federal standards, allowing the Department to conform with any changes on the federal level.
4. ~~§61-39-3.1~~ - We recommend removing the requirement for retailers who sell hemp products to register products grown and manufactured in West Virginia. The Department will be involved in regulating the production and manufacturing of products sold in West Virginia, making these additional fees unnecessary and redundant. Section 4.1 required the manufacturer to register their products that retailers will ultimately sell. The Department should require registration for out of state products to ensure that they meet our quality control standards as they were not grown or manufactured in the state under our regulatory framework.

5. ~~§61-30-4.3~~ - We recommend removing this section in its entirety. Rather, we suggest that the manufacturer or retailer of a product be required to register with the Department to put the Department on notice, but not be required companies to "register" every single hemp product at \$200.00 per product.

**Rationale:** The regulatory cost is overly burdensome and will result in a cost prohibitive regulation for manufacturers and retailers. This will make products grown and manufactured in this state unable to compete with products that are produced in other states with fewer regulatory costs. Requiring a registration fee of \$200.00 per product is an astronomical cost requirement, and will result in an immediate downturn for hemp product sales in this state.

6. ~~§61-30-5~~ - We recommend removing this section in its entirety as it conflicts with *W. Va. Code §19-12E*. The Department is in essence requiring a "de facto license" to distribute hemp products or extracts. This is an overreach and exceeds the scope of regulatory authority granted by the West Virginia Legislature in the enabling statute.
7. ~~§61-30-9~~ - We recommend the addition of a "notice requirement" for manufacturers and retailers before they are inspected and tested by the Department.
8. ~~§61-30-10~~ - Section 10.1 expressly states that the seller is required to apply for their "license" annually. We recommend removing all references to "seller" in this section as it conflicts with *W. Va. Code §19-12E* for the reasons stated herein.

Thank your for you consideration in reading our public comments. If you have any questions or concerns, please do not hesitate to contact us. We look forward to attending the legislative rule committee hearings to address our concerns.

Very truly yours,



---

**J. Morgan Leach**  
WVHIA President  
morgan@wvhia.org

/s/ Marc Dunbar  
WVHIA Executive Director  
mdunbar6@mix.wvu.edu

# West Virginia Department of Agriculture

Kent A. Leonhardt, Commissioner  
Joseph L. Hatton, Deputy Commissioner



July 26, 2019

J. Morgan Leach  
WVHIA President  
[morgan@wvhia.org](mailto:morgan@wvhia.org)

Dear Mr. Leach:

Thank you for submitting public comments in response to the West Virginia Department of Agriculture's (WVDA's) proposed legislative rule, **61 C.S.R. §29, Industrial Hemp**, and **61 C.S.R. §30, Hemp Products**. All comments were reviewed by Department staff, compared to current law and practices in other jurisdictions, and considered for inclusion. Below are the responses of the Department.

**Comment:**

**§61-29-3.11** - We oppose this section in its entirety. *W. Va. Code §19-12E* prohibits the department from requiring a license to possess, handle, or process hemp. "Notwithstanding any provision of the code to the contrary, a person need not obtain a license to possess, handle, transport, or sell hemp products or extracts, including those containing one or more hemp-derived cannabinoids, including CBD." *W. Va. Code §19-12E-5 Industrial Hemp Licensing(f)(1)*.

**Response:**

The Department disagrees with this interpretation. Licensure to grow industrial hemp is specifically required by West Virginia Code §19-12E-5(a) ("A person growing industrial hemp shall apply to the commissioner for a license on a form prescribed by the commissioner."). *See also* W. Va. Code §19-12E-7 (authorizing rulemaking for "[l]icensing persons who wish to grow, cultivate, handle, or process industrial hemp"). The language cited refers to required licensure to handle "hemp products or extracts," and not the raw hemp product.

**Comment:**

**§61-29-3.12.b** - We oppose the requirement to re-submit background checks after three years as it is not necessary due to section 4.5. Section 3.12.b is redundant of section 4.5 that requires a licensee to report any subsequent changes to their application, including the background check. Section 4.5 achieves the same regulatory purpose that ensures the Licensee maintains a clear background check to maintain their hemp license.

**Response:**

During the 2019 Regular Legislative Session, the Legislature explicitly authorized background checks of both initial applicants and others involved with the program. *See* W. Va. Code §19-12E-5(c) ("The commissioner shall require each first-time applicant, and may establish requirements for other persons involved with the industrial hemp program, to submit to a state and national criminal history record check."). The Department maintains that it is sound policy, both to protect the integrity of the program and to ensure compliance with the 2018 Farm Bill, which prohibits licensure of individuals who

have committed certain felonies within the preceding ten years.

**Comment:**

**§61-29-4.1** - We oppose the requirement for Licensees to submit a letter and their license to the County Sheriff and State Police. This purpose may be achieved by simply publishing the list of Licensees on the WV Department of Agriculture's website. This list is currently is available on the Department's website for the county Sheriffs and State Police to access.

**Response:**

The requirement in question was added at the request of the Legislature during the 2019 Regular Session. The Department believes it is good policy for growers and possessors of raw industrial hemp to work collaboratively with law enforcement, and believes that this requirement accomplishes that purpose.

**Comment:**

**§61-29-5** - We recommend the addition of model language in this section that fairly accommodates various harvesting techniques and markets for both intact flower and ground floral materials harvested from hemp.

**Response:**

The Department is awaiting final guidance from the U.S. Department of Agriculture regarding the sampling and testing protocols that will be utilized. Until that guidance is provided, the Department has chosen to utilize the current testing protocols. Those protocols require pre-harvest testing, which must be done before harvest, and necessarily cannot verify the form in which the producer will ultimately provide the material to the processor.

The Department notes that sampling and testing protocols are not explicitly laid out in its legislative rule, which allows the Department to adjust its policies based on the feedback and direction provided by the U.S. Department of Agriculture and the practices of surrounding states. The Department contends that its current pre-harvest sampling practices are in line with those utilized in large number of other states and do not put the Department outside the mainstream.

**Comment:**

**§61-29-5.4 (b)** - We recommend an amendment with the following language to permit duplicate sampling for third party analysis. "The sampled material shall be divided into three equal parts. One part shall be used for testing, one part shall be retained for retesting, and one part may be sent by the Department through their chain of custody protocols to a third party laboratory. Sampled material will only be sent to a third party laboratory at the request and expense of the Licensee."

**Response:**

The Department declines to adopt this policy. A licensee can collect and send a sample to a third party at the same time the Department collects its samples. Official results for required THC testing, however, are determined by the Department laboratories. Further, the Department's laboratories already split a single sample, as required by rule, into two test batches, and further divide each of those samples when performing testing, which allows for up to four tests of a sample to be performed before an adverse determination is made.

**Comment:**

**§61-29-5.7** - We recommend that the Department be required to provide actual mileage incurred for inspection and sampling. If the Department goes to a single county to test multiple farms, that mileage

should be shared pro-rata between the farms that are inspected on that trip. For example, if the Department drives to a farm in Wood County for testing, they should not bill each farm in Wood County for the travel time and mileage from the Guthrie Center to their farm, but rather, the Department should aggregate the travel time and mileage driving to that county and bill each farmer that was inspected with a pro-rata share of that cost.

**Response:**

The Department concurs that the current rule language is unclear regarding actual mileage, and has submitted proposed changes to the rule to address that issue. *See* Section 5.7 (“As part of inspection and testing, each licensee shall pay actual mileage incurred, plus a charge of \$35/hour per inspector for actual drive time, ~~mileage~~, inspection and sampling time. In addition, each licensee shall pay for all actual incurred laboratory analysis testing costs that the Department considers appropriate, including retesting.”)

**Comment:**

**§61-29-6.11b** - We opposed this requirement for the same reasons set forth in comment 1 above.

**Response:**

As noted above, during the 2019 Regular Legislative Session, the Legislature explicitly authorized background checks of both initial applicants and others involved with the program. *See* W. Va. Code §19-12E-5(c) (“The commissioner shall require each first-time applicant, and may establish requirements for other persons involved with the industrial hemp program, to submit to a state and national criminal history record check.”). The Department maintains that it is sound policy, both to protect the integrity of the program and to ensure compliance with the 2018 Farm Bill, which prohibits licensure of individuals who have committed certain felonies within the preceding ten years.

**Comment:**

**§61-30** - We oppose the requirement for registering those who possess, handle, transport or sell hemp products or extracts. Rather, we recommend that registering hemp products be an “option” for retail establishments in West Virginia, as the enabling statute prohibits the department from requiring them to obtain a license as stated in *W. Va. Code §19-12E*.

**Response:**

During the 2019 Regular Legislative Session, the Legislature directed the Department to develop regulations for “[t]he production, sale, possession, handling, or transport of hemp products and extracts, including those containing one or more hemp-derived cannabinoids, including CBD.” W. Va. Code §19-12E-7(6). Further, the Department was granted broad authority by the Legislature to do so. Following a review of current regulatory structures already utilized at the Department, and a review of the manner in which other States were addressing hemp products, the Department concluded that the most effective way to fully carry out this legislative mandate was to require registration of both the products (which may come from both inside and outside the state) and the selling locations within the State of West Virginia. The Department disagrees that product and selling location registration constitutes a “de facto” licensure. Registration is a ministerial task, whereas licensure affords discretion and contemplates evaluation of credentials and eligibility. However, following discussions with stakeholders and internal discussions, and to further the goals established above, the rule was amended to include a decal or other indication that the selling location was authorized and registered, which will allow for easier regulation and reward those who are following the rules. *See* Section 5.7 (“5.7. Retail facilities that register with the Department will be provided a verification document, in the form of a certificate or otherwise, for display at the retail location, which will indicate that the retail facility is an authorized location for the sale and/or distribution of hemp products.”).

**Comment:**

**§61-30-2.18** - We recommend the following amendment to this section to conform with *W. Va. Code §19-12E*.

"Licensee" means an individual or business entity possessing a license issued by the Department to grow, handle, cultivate, or process hemp. A "licensee" also means an individual or business possessing a license issued by the Department to sell and/or distribute hemp products.

**Response:**

The Department concurs in part. The second portion of the definition addresses those who are covered by the registration process, and not by the licensure covered by 61 C.S.R. § 29. The Department has created a new definition of "Registrant" to address the concerning portion of Section 2.18, and has made changes throughout the rule to correspond. The Department declines, however, to change the first portion of the definition, because it is identical to that found in W. Va. Code §19-12E-3(i).

**Comment:**

**§61-30-2.24** - We recommend removing this section in its entirety. This section is redundant of Section 2.13 that defines hemp, including the THC threshold. This section automatically accommodates the federal standards, allowing the Department to conform with any changes on the federal level.

**Response:**

The Department declines to make this change. The inclusion of this definition is necessary to ensure that there will not be confusion as to how THC is defined. This statement is also needed in the event that the Department need to change the way that THC is calculated, based on federal guidance.

**Comment:**

**§61-30-3.1** - We recommend removing the requirement for retailers who sell hemp products to register products grown and manufactured in West Virginia. The Department will be involved in regulating the production and manufacturing of products sold in West Virginia, making these additional fees unnecessary and redundant. Section 4.1 required the manufacturer to register their products that retailers will ultimately sell. The Department should require registration for out of state products to ensure that they meet our quality control standards as they were not grown or manufactured in the state under our regulatory framework.

**Response:**

The Department disagrees. There are currently no other rules to regulate final hemp products. The WVDA needs to know what final products are on the market (regardless of the product origin). This will ensure that all hemp products, not just those manufactured outside of the state, that are on the market are safe for public use. Moreover, the Department's oversight of the production and manufacturing process (covered in 61 C.S.R. §29) addresses the process for manufacturing products, and not the content, labeling claims, or other issues related to the products themselves that are addressed by this legislative rule.

**Comment:**

**§61-30-4.3** - We recommend removing this section in its entirety. Rather, we suggest that the manufacturer or retailer of a product be required to register with the Department to put the Department on notice, but not be required companies to "register" every single hemp product at \$200.00 per product.

**Response:**

The fee related to the registration of product will be used toward costs incurred by the registration specialist, compliance officer, regulatory inspectors, chemists, and microbiologists and related costs to



collect samples, determine the suitability of the product labels, and analyze the samples for a variety of different analytes. The Department is not supported fiscally by any other means for this program and will not be capable of ensuring safe hemp products and consumer safety without the fees. Moreover, in setting its fees, the Department has reviewed fee structures and costs in other states and has determined that the fees established are both necessary to support the program and reasonable compared to other jurisdictions. *See W. Va. Code §19-12E-7(4)* (permitting legislative rules to address the “[a]ssessment of fees that are commensurate with the costs of the commissioner’s activities in licensing, testing, and supervising industrial hemp production”).

**Comment:**

**§61-30-5** - We recommend removing this section in its entirety as it conflicts with *W. Va. Code §19-12E*. The Department is in essence requiring a “de facto license” to distribute hemp products or extracts. This is an overreach and exceeds the scope of regulatory authority granted by the West Virginia Legislature in the enabling statute.

**Response:**

The Department disagrees that product and selling location registration constitutes a “de facto” licensure. Registration is a ministerial task, whereas licensure affords discretion and contemplates evaluation of credentials and eligibility. However, following discussions with stakeholders and internal discussions, and to further the goals established above, the rule was amended to include a decal or other indication that the selling location was authorized and registered, which will allow for easier regulation and reward those who are following the rules. *See Section 5.7 (“5.7. Retail facilities that register with the Department will be provided a verification document, in the form of a certificate or otherwise, for display at the retail location, which will indicate that the retail facility is an authorized location for the sale and/or distribution of hemp products.”)*.

During the 2019 Regular Legislative Session, the Legislature directed the Department to develop regulations for “[t]he production, sale, possession, handling, or transport of hemp products and extracts, including those containing one or more hemp-derived cannabinoids, including CBD.” *W. Va. Code §19-12E-7(6)*. Further, the Department was granted broad authority by the Legislature to do so. Following a review of current regulatory structures already utilized at the Department, and a review of the manner in which other States were addressing hemp products, the Department concluded that the most effective way to fully carry out this legislative mandate was to require registration of both the products (which may come from both inside and outside the state) and the selling locations within the State of West Virginia.

**Comment:**

**§61-30-9** - We recommend the addition of a “notice requirement” for manufacturers and retailers before they are inspected and tested by the Department.

**Response:**

The Department disagrees with providing a notice requirement. Effective regulation requires that regulated entities not be apprised of when they will be inspected or reviewed, as the Department wants a true “snapshot” of what happens in a normal workday. Providing notice would undermine the integrity and legitimacy of the regulatory program. Moreover, the Department does not currently give notice for any other programs.

**Comment:**

**§61-30-10** - Section 10.1 expressly states that the seller is required to apply for their “license” annually. We recommend removing all references to “seller” in this section as it conflicts with *W. Va. Code §19-12E* for the reasons stated herein.

**Response:**

The Department concurs in part, and has modified section 10.1 to remove references to a "license" and replace that reference with a renewal of registration.

We appreciate your interest in these legislative rules and your participation in the public comment process, and we look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent A. Leonhardt", with a long, horizontal flourish extending to the right.

Kent A. Leonhardt  
Commissioner

**Keaton, Jennifer**

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**From:** WV Legislative Rules Comments  
**Subject:** FW: PUBLIC COMMENTS FOR TITLE SERIES 61-29 AND 61-30

**From:** clay condon <claycon@gmail.com>  
**Sent:** Monday, July 22, 2019 4:56 PM  
**To:** WV Legislative Rules Comments <rulescomments@wvda.us>  
**Subject:** RE: PUBLIC COMMENTS FOR TITLE SERIES 61-29 AND 61-30

Ms. Birchfield,

Please see the attached PDF which represents my comments to the above referenced legislative rule amendments.

Clay Condon

Kinfolk Farms  
Hillsboro WV  
Hemp Permit License # 0004  
304.646.0108  
[claycon@gmail.com](mailto:claycon@gmail.com)



West Virginia Hemp  
Industries Association  
902 29th St. Vienna,  
West Virginia 26105  
wvhia.org

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July 15, 2019

Madison Birchfield  
West Virginia Department of Agriculture  
1900 Kanawha Blvd. East, Room E-28  
Charleston, West Virginia, 25305-0170  
[rulescomments@wvda.us](mailto:rulescomments@wvda.us)  
**VIA EMAIL ONLY**

**RE: PUBLIC COMMENTS FOR TITLE SERIES 61-29 AND 61-30**

Ms. Birchfield:

Please see the following public comments to the above referenced legislative rule amendments.

**TITLE SERIES 61-29**

1. ~~§61-29-3.11~~ - We oppose this section in its entirety. *W. Va. Code §19-12E* prohibits the department from requiring a license to possess, handle, or process hemp.

"Notwithstanding any provision of the code to the contrary, a person ~~need not obtain a license to possess, handle, transport, or sell hemp products or extracts~~, including those containing one or more hemp-derived cannabinoids, including CBD." *W. Va. Code §19-12E-5 Industrial Hemp Licensing (f) (1)*.

2. ~~§61-29-3.12.b~~ - We oppose the requirement to re-submit background checks after three years as it is not necessary due to section 4.5. Section 3.12.b is redundant of section 4.5 that requires a licensee to report any subsequent changes to their application, including the background check. Section 4.5 achieves the same regulatory purpose that ensures the Licensee maintains a clear background check to maintain their hemp license.
3. ~~§61-29-4.1~~ - We oppose the requirement for Licensees to submit a letter and their license to the County Sheriff and State Police. This purpose may be achieved by simply publishing the list of Licensees on the WV Department of Agriculture's website. This list is currently is available on the Department's website for the county Sheriffs and State Police to access.

4. §61-29-5 - We recommend the addition of model language in this section that fairly accommodates various harvesting techniques and markets for both intact flower and ground floral materials harvested from hemp.

"All pre-harvest samples of floral material shall be taken from the designated harvested plot materials in the form (intact plant, flowers, ground materials, etc.) in which the material will be sent to the processor. An inspector must require the licensee to harvest and market the entire crop in the form in which it was tested by the Department."

**For intact-plant samples:**

1. Ensure that the entire harvest is accounted for and in the same form (i.e., intact-plants).
2. Clip the top 20 cm of hemp plant, primary stem, including leaf and female floral material.

**For ground plant or ground floral material samples:**

1. Ensure that the entire harvest is accounted for and in the same form (i.e., all harvested material whether whole plant or floral material only must be ground with no intact plants or whole flowers remaining from that harvest).
2. Sample material from bag or container that is collected from four separate areas in the field from which the material is harvested.

5. §61-29-5.4 (b) - We recommend an amendment with the following language to permit duplicate sampling for third party analysis.

"The sampled material shall be divided into three equal parts. One part shall be used for testing, one part shall be retained for retesting, and one part may be sent by the Department through their chain of custody protocols to a third party laboratory. Sampled material will only be sent to a third party laboratory at the request and expense of the Licensee."

6. §61-29-5.7 - We recommend that the Department be required to provide actual mileage incurred for inspection and sampling. If the Department goes to a single county to test multiple farms, that mileage should be shared pro-rata between the farms that are inspected on that trip. For example, if the Department drives to a farm in Wood County for testing, they should not bill each farm in Wood County for the travel time and mileage from the Guthrie Center to their farm, but rather, the Department should aggregate the travel time and mileage driving to that county and bill each farmer that was inspected with a pro-rata share of that cost.
7. §61-29-6.11h - We opposed this requirement for the same reasons set forth in comment 1 above.

TITLE SERIES 61-39

1. §61-39 - We oppose the requirement for registering those who possess, handle, transport or sell hemp products or extracts. Rather, we recommend that registering hemp products be an "option" for retail establishments in West Virginia, as the enabling statute prohibits the department from requiring them to obtain a license as stated in *W. Va. Code §19-12E*.

"Notwithstanding any provision of the code to the contrary, a person ~~need not obtain a license to possess, handle, transport, or sell hemp products or extracts~~, including those containing one or more hemp-derived cannabinoids, including CBD." *W. Va. Code §19-12E-5 Industrial Hemp Licensing (f) (1)*.

Rationale: The Department's proposed rule is creating a "*de facto license*" for hemp retailers to sell products, which is contrary to statute. If this, however, where an "option" for a retailer to gain Department inspection and approval, this would create a competitive quality standard for products sold in West Virginia. This registration would then inform the consumer as to the quality of the products would and provide retailers an incentive to register their products with the Department and advertise approved products to gain an advantage in the marketplace.

In the alternative, we advocate for the following amendments to Title Series 61-39:

2. §61-39-2.18 - We recommend the following amendment to this section to conform with *W. Va. Code §19-12E*.

"Licensee" means an individual or business entity possessing a license issued by the Department to grow, ~~handle~~, cultivate, or process hemp. ~~A "Licensee" also means an individual or business possessing a license issued by the Department to sell and/or distribute hemp products.~~

3. §61-39-2.24 - We recommend removing this section in its entirety. This section is redundant of Section 2.13 that defines hemp, including the THC threshold. This section automatically accommodates the federal standards, allowing the Department to conform with any changes on the federal level.
4. §61-39-3.1 - We recommend removing the requirement for retailers who sell hemp products to register products grown and manufactured in West Virginia. The Department will be involved in regulating the production and manufacturing of products sold in West Virginia, making these additional fees unnecessary and redundant. Section 4.1 required the manufacturer to register their products that retailers will ultimately sell. The Department should require registration for out of state products to ensure that they meet our quality control standards as they were not grown or manufactured in the state under our regulatory framework.

5. ~~§61-30-4.3~~ - We recommend removing this section in its entirety. Rather, we suggest that the manufacturer or retailer of a product be required to register with the Department to put the Department on notice, but not be required companies to "register" every single hemp product at \$200.00 per product.

**Rationale:** The regulatory cost is overly burdensome and will result in a cost prohibitive regulation for manufacturers and retailers. This will make products grown and manufactured in this state unable to compete with products that are produced in other states with fewer regulatory costs. Requiring a registration fee of \$200.00 per product is an astronomical cost requirement, and will result in an immediate downturn for hemp product sales in this state.

6. ~~§61-30-5~~ - We recommend removing this section in its entirety as it conflicts with *W. Va. Code §19-12E*. The Department is in essence requiring a "de facto license" to distribute hemp products or extracts. This is an overreach and exceeds the scope of regulatory authority granted by the West Virginia Legislature in the enabling statute.
7. ~~§61-30-2~~ - We recommend the addition of a "notice requirement" for manufacturers and retailers before they are inspected and tested by the Department.
8. ~~§61-30-10~~ - Section 10.1 expressly states that the seller is required to apply for their "license" annually. We recommend removing all references to "seller" in this section as it conflicts with *W. Va. Code §19-12E* for the reasons stated herein.

Thank your for you consideration in reading our public comments. If you have any questions or concerns, please do not hesitate to contact us. We look forward to attending the legislative rule committee hearings to address our concerns.

Very truly yours,



.....  
J. Morgan Leach  
WVHIA President  
morgan@wvhia.org

/s/ Marc Dunbar  
WVHIA Executive Director  
mdunbar6@mix.wvu.edu

# West Virginia Department of Agriculture

Kent A. Leonhardt, Commissioner  
Joseph L. Hatton, Deputy Commissioner



July 26, 2019

Clay Condon  
Kinfolk Farms  
claycon@gmail.com

Dear Mr. Condon:

Thank you for submitting public comments in response to the West Virginia Department of Agriculture's (WVDA's) proposed legislative rule, **61 C.S.R. §29, Industrial Hemp**, and **61 C.S.R. §30, Hemp Products**. All comments were reviewed by Department staff, compared to current law and practices in other jurisdictions, and considered for inclusion. Below are the responses of the Department.

**Comment:**

Your comment expressed support for the comments submitted by the West Virginia Hemp Industry Association.

**Response:**

The Department has fully responded to the comments submitted by the West Virginia Hemp Industry Association and those responses are on file with the West Virginia Secretary of State. A copy of that response is attached.

We appreciate your interest in these legislative rules and your participation in the public comment process. We look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent A. Leonhardt", is written over a horizontal line.

Kent A. Leonhardt  
Commissioner



# West Virginia Department of Agriculture

Kent A. Leonhardt, Commissioner  
Joseph L. Hatton, Deputy Commissioner



July 26, 2019

J. Morgan Leach  
WVHIA President  
[morgan@wvhia.org](mailto:morgan@wvhia.org)

Dear Mr. Leach:

Thank you for submitting public comments in response to the West Virginia Department of Agriculture's (WVDA's) proposed legislative rule, **61 C.S.R. §29, Industrial Hemp**, and **61 C.S.R. §30, Hemp Products**. All comments were reviewed by Department staff, compared to current law and practices in other jurisdictions, and considered for inclusion. Below are the responses of the Department.

**Comment:**

**§61-29-3.11** - We oppose this section in its entirety. *W. Va. Code §19-12E* prohibits the department from requiring a license to possess, handle, or process hemp. "Notwithstanding any provision of the code to the contrary, a person need not obtain a license to possess, handle, transport, or sell hemp products or extracts, including those containing one or more hemp-derived cannabinoids, including CBD." *W. Va. Code §19-12E-5 Industrial Hemp Licensing(f)(1)*.

**Response:**

The Department disagrees with this interpretation. Licensure to grow industrial hemp is specifically required by West Virginia Code §19-12E-5(a) ("A person growing industrial hemp shall apply to the commissioner for a license on a form prescribed by the commissioner."). *See also* W. Va. Code §19-12E-7 (authorizing rulemaking for "[l]icensing persons who wish to grow, cultivate, handle, or process industrial hemp"). The language cited refers to required licensure to handle "hemp products or extracts," and not the raw hemp product.

**Comment:**

**§61-29-3.12.b** - We oppose the requirement to re-submit background checks after three years as it is not necessary due to section 4.5. Section 3.12.b is redundant of section 4.5 that requires a licensee to report any subsequent changes to their application, including the background check. Section 4.5 achieves the same regulatory purpose that ensures the Licensee maintains a clear background check to maintain their hemp license.

**Response:**

During the 2019 Regular Legislative Session, the Legislature explicitly authorized background checks of both initial applicants and others involved with the program. *See* W. Va. Code §19-12E-5(c) ("The commissioner shall require each first-time applicant, and may establish requirements for other persons involved with the industrial hemp program, to submit to a state and national criminal history record check."). The Department maintains that it is sound policy, both to protect the integrity of the program and to ensure compliance with the 2018 Farm Bill, which prohibits licensure of individuals who

have committed certain felonies within the preceding ten years.

**Comment:**

§61-29-4.1 - We oppose the requirement for Licensees to submit a letter and their license to the County Sheriff and State Police. This purpose may be achieved by simply publishing the list of Licensees on the WV Department of Agriculture's website. This list is currently is available on the Department's website for the county Sheriffs and State Police to access.

**Response:**

The requirement in question was added at the request of the Legislature during the 2019 Regular Session. The Department believes it is good policy for growers and possessors of raw industrial hemp to work collaboratively with law enforcement, and believes that this requirement accomplishes that purpose.

**Comment:**

§61-29-5 - We recommend the addition of model language in this section that fairly accommodates various harvesting techniques and markets for both intact flower and ground floral materials harvested from hemp.

**Response:**

The Department is awaiting final guidance from the U.S. Department of Agriculture regarding the sampling and testing protocols that will be utilized. Until that guidance is provided, the Department has chosen to utilize the current testing protocols. Those protocols require pre-harvest testing, which must be done before harvest, and necessarily cannot verify the form in which the producer will ultimately provide the material to the processor.

The Department notes that sampling and testing protocols are not explicitly laid out in its legislative rule, which allows the Department to adjust its policies based on the feedback and direction provided by the U.S. Department of Agriculture and the practices of surrounding states. The Department contends that its current pre-harvest sampling practices are in line with those utilized in large number of other states and do not put the Department outside the mainstream.

**Comment:**

§61-29-5.4 (b) - We recommend an amendment with the following language to permit duplicate sampling for third party analysis. "The sampled material shall be divided into three equal parts. One part shall be used for testing, one part shall be retained for retesting, and one part may be sent by the Department through their chain of custody protocols to a third party laboratory. Sampled material will only be sent to a third party laboratory at the request and expense of the Licensee."

**Response:**

The Department declines to adopt this policy. A licensee can collect and send a sample to a third party at the same time the Department collects its samples. Official results for required THC testing, however, are determined by the Department laboratories. Further, the Department's laboratories already split a single sample, as required by rule, into two test batches, and further divide each of those samples when performing testing, which allows for up to four tests of a sample to be performed before an adverse determination is made.

**Comment:**

§61-29-5.7 - We recommend that the Department be required to provide actual mileage incurred for inspection and sampling. If the Department goes to a single county to test multiple farms, that mileage

should be shared pro-rata between the farms that are inspected on that trip. For example, if the Department drives to a farm in Wood County for testing, they should not bill each farm in Wood County for the travel time and mileage from the Guthrie Center to their farm, but rather, the Department should aggregate the travel time and mileage driving to that county and bill each farmer that was inspected with a pro-rata share of that cost.

**Response:**

The Department concurs that the current rule language is unclear regarding actual mileage, and has submitted proposed changes to the rule to address that issue. *See* Section 5.7 (“As part of inspection and testing, each licensee shall pay actual mileage incurred, plus a charge of \$35/hour per inspector for actual drive time, mileage, inspection and sampling time. In addition, each licensee shall pay for all actual incurred laboratory analysis testing costs that the Department considers appropriate, including retesting.”)

**Comment:**

**§61-29-6.11b** - We opposed this requirement for the same reasons set forth in comment 1 above.

**Response:**

As noted above, during the 2019 Regular Legislative Session, the Legislature explicitly authorized background checks of both initial applicants and others involved with the program. *See* W. Va. Code §19-12E-5(c) (“The commissioner shall require each first-time applicant, and may establish requirements for other persons involved with the industrial hemp program, to submit to a state and national criminal history record check.”). The Department maintains that it is sound policy, both to protect the integrity of the program and to ensure compliance with the 2018 Farm Bill, which prohibits licensure of individuals who have committed certain felonies within the preceding ten years.

**Comment:**

**§61-30** - We oppose the requirement for registering those who possess, handle, transport or sell hemp products or extracts. Rather, we recommend that registering hemp products be an “option” for retail establishments in West Virginia, as the enabling statute prohibits the department from requiring them to obtain a license as stated in *W. Va. Code §19-12E*.

**Response:**

During the 2019 Regular Legislative Session, the Legislature directed the Department to develop regulations for “[t]he production, sale, possession, handling, or transport of hemp products and extracts, including those containing one or more hemp-derived cannabinoids, including CBD.” W. Va. Code §19-12E-7(6). Further, the Department was granted broad authority by the Legislature to do so. Following a review of current regulatory structures already utilized at the Department, and a review of the manner in which other States were addressing hemp products, the Department concluded that the most effective way to fully carry out this legislative mandate was to require registration of both the products (which may come from both inside and outside the state) and the selling locations within the State of West Virginia. The Department disagrees that product and selling location registration constitutes a “de facto” licensure. Registration is a ministerial task, whereas licensure affords discretion and contemplates evaluation of credentials and eligibility. However, following discussions with stakeholders and internal discussions, and to further the goals established above, the rule was amended to include a decal or other indication that the selling location was authorized and registered, which will allow for easier regulation and reward those who are following the rules. *See* Section 5.7 (“5.7. Retail facilities that register with the Department will be provided a verification document, in the form of a certificate or otherwise, for display at the retail location, which will indicate that the retail facility is an authorized location for the sale and/or distribution of hemp products.”).

**Comment:**

**§61-30-2.18** - We recommend the following amendment to this section to conform with *W. Va. Code §19-12E*.

"Licensee" means an individual or business entity possessing a license issued by the Department to grow, handle, cultivate, or process hemp. A "licensee" also means an individual or business possessing a license issued by the Department to sell and/or distribute hemp products.

**Response:**

The Department concurs in part. The second portion of the definition addresses those who are covered by the registration process, and not by the licensure covered by 61 C.S.R. § 29. The Department has created a new definition of "Registrant" to address the concerning portion of Section 2.18, and has made changes throughout the rule to correspond. The Department declines, however, to change the first portion of the definition, because it is identical to that found in W. Va. Code §19-12B-3(i).

**Comment:**

**§61-30-2.24** - We recommend removing this section in its entirety. This section is redundant of Section 2.13 that defines hemp, including the THC threshold. This section automatically accommodates the federal standards, allowing the Department to conform with any changes on the federal level.

**Response:**

The Department declines to make this change. The inclusion of this definition is necessary to ensure that there will not be confusion as to how THC is defined. This statement is also needed in the event that the Department need to change the way that THC is calculated, based on federal guidance.

**Comment:**

**§61-30-3.1** - We recommend removing the requirement for retailers who sell hemp products to register products grown and manufactured in West Virginia. The Department will be involved in regulating the production and manufacturing of products sold in West Virginia, making these additional fees unnecessary and redundant. Section 4.1 required the manufacturer to register their products that retailers will ultimately sell. The Department should require registration for out of state products to ensure that they meet our quality control standards as they were not grown or manufactured in the state under our regulatory framework.

**Response:**

The Department disagrees. There are currently no other rules to regulate final hemp products. The WVDA needs to know what final products are on the market (regardless of the product origin). This will ensure that all hemp products, not just those manufactured outside of the state, that are on the market are safe for public use. Moreover, the Department's oversight of the production and manufacturing process (covered in 61 C.S.R. §29) addresses the process for manufacturing products, and not the content, labeling claims, or other issues related to the products themselves that are addressed by this legislative rule.

**Comment:**

**§61-30-4.3** - We recommend removing this section in its entirety. Rather, we suggest that the manufacturer or retailer of a product be required to register with the Department to put the Department on notice, but not be required companies to "register" every single hemp product at \$200.00 per product.

**Response:**

The fee related to the registration of product will be used toward costs incurred by the registration specialist, compliance officer, regulatory inspectors, chemists, and microbiologists and related costs to

collect samples, determine the suitability of the product labels, and analyze the samples for a variety of different analytes. The Department is not supported fiscally by any other means for this program and will not be capable of ensuring safe hemp products and consumer safety without the fees. Moreover, in setting its fees, the Department has reviewed fee structures and costs in other states and has determined that the fees established are both necessary to support the program and reasonable compared to other jurisdictions. See W. Va. Code §19-12E-7(4) (permitting legislative rules to address the “[a]ssessment of fees that are commensurate with the costs of the commissioner’s activities in licensing, testing, and supervising industrial hemp production”).

**Comment:**

**§61-30-5** - We recommend removing this section in its entirety as it conflicts with *W. Va. Code §19-12E*. The Department is in essence requiring a “de facto license” to distribute hemp products or extracts. This is an overreach and exceeds the scope of regulatory authority granted by the West Virginia Legislature in the enabling statute.

**Response:**

The Department disagrees that product and selling location registration constitutes a “de facto” licensure. Registration is a ministerial task, whereas licensure affords discretion and contemplates evaluation of credentials and eligibility. However, following discussions with stakeholders and internal discussions, and to further the goals established above, the rule was amended to include a decal or other indication that the selling location was authorized and registered, which will allow for easier regulation and reward those who are following the rules. See Section 5.7 (“5.7. Retail facilities that register with the Department will be provided a verification document, in the form of a certificate or otherwise, for display at the retail location, which will indicate that the retail facility is an authorized location for the sale and/or distribution of hemp products.”).

During the 2019 Regular Legislative Session, the Legislature directed the Department to develop regulations for “[t]he production, sale, possession, handling, or transport of hemp products and extracts, including those containing one or more hemp-derived cannabinoids, including CBD.” W. Va. Code §19-12E-7(6). Further, the Department was granted broad authority by the Legislature to do so. Following a review of current regulatory structures already utilized at the Department, and a review of the manner in which other States were addressing hemp products, the Department concluded that the most effective way to fully carry out this legislative mandate was to require registration of both the products (which may come from both inside and outside the state) and the selling locations within the State of West Virginia.

**Comment:**

**§61-30-9** - We recommend the addition of a “notice requirement” for manufacturers and retailers before they are inspected and tested by the Department.

**Response:**

The Department disagrees with providing a notice requirement. Effective regulation requires that regulated entities not be apprised of when they will be inspected or reviewed, as the Department wants a true “snapshot” of what happens in a normal workday. Providing notice would undermine the integrity and legitimacy of the regulatory program. Moreover, the Department does not currently give notice for any other programs.

**Comment:**

**§61-30-10** - Section 10.1 expressly states that the seller is required to apply for their “license” annually. We recommend removing all references to “seller” in this section as it conflicts with *W. Va. Code §19-12E* for the reasons stated herein.

**Response:**

The Department concurs in part, and has modified section 10.1 to remove references to a "license" and replace that reference with a renewal of registration.

We appreciate your interest in these legislative rules and your participation in the public comment process, and we look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent A. Leonhardt", written over a horizontal line.

Kent A. Leonhardt  
Commissioner

**Keaton, Jennifer**

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**From:** Tracy Brown <tracy.brown74@hotmail.com>  
**Sent:** Monday, July 15, 2019 12:28 PM  
**To:** WV Legislative Rules Comments  
**Cc:** Tracy Brown  
**Subject:** PUBLIC COMMENTS FOR TITLE SERIES 61-29 AND 61-30  
**Attachments:** WVLegislature Title 61-29 and 61-30.pdf

Please find the attached .pdf file containing comments from Brown's Hillside Herb Garden in support of the comments by the WV Hemp Industries Association. I appreciate the opportunity to provide feedback on this legislation and hope WV will consider this advisement from farmers to promote a competitive economic future with the rising industrial hemp market. As a full time career business woman and single mother, I have taken on this farming endeavor with hopes to enhance opportunities for myself and my children. This business could supplement my income, aid with my financial responsibilities, provide an opportunity for my children to explore a future with farming and stay in the State. I have copied the content of the .pdf file below in the event that the file is difficult to access.

Kind regards,  
Tracy Brown, Owner  
Brown's Hillside Herb Garden

July 15, 2019

Madison Birchfield  
West Virginia Department of Agriculture  
1900 Kanawha Blvd. East, Room E-28  
Charleston, West Virginia, 25305-0170  
[rulescomments@wvda.us](mailto:rulescomments@wvda.us)  
**VIA EMAIL ONLY**

**RE: PUBLIC COMMENTS FOR TITLE SERIES 61-29 AND 61-30**

Ms. Birchfield:

Please see the following public comments to the above referenced legislative rule amendments.

**TITLE SERIES 61-29**

1. **§61-29-3.11** - We oppose this section in its entirety. *W. Va. Code §19-12E* prohibits the department from requiring a license to possess, handle, or process hemp.

“Notwithstanding any provision of the code to the contrary, a person need not obtain a license to

possess, handle, transport, or sell hemp products or extracts, including those containing one or more hemp-derived cannabinoids, including CBD.” W. Va. Code §19-12E-5 Industrial Hemp Licensing (f) (1).

1. §61-29-3.12.b - We oppose the requirement to re-submit background checks after three years as it is not necessary due to section 4.5. Section 3.12.b is redundant of section 4.5 that requires a licensee to report any subsequent changes to their application, including the background check. Section 4.5 achieves the same regulatory purpose that ensures the Licensee maintains a clear background check to maintain their hemp license.
1. §61-29-4.1 - We oppose the requirement for Licensees to submit a letter and their license to the County Sheriff and State Police. This purpose may be achieved by simply publishing the list of Licensees on the WV Department of Agriculture’s website. This list is currently is available on the Department’s website for the county Sheriffs and State Police to access.
1. §61-29-5 - We recommend the addition of model language in this section that fairly accommodates various harvesting techniques and markets for both intact flower and ground floral materials harvested from hemp.

“All pre-harvest samples of floral material shall be taken from the designated harvested plot materials in the form (intact plant, flowers, ground materials, etc.) in which the material will be sent to the processor. An inspector must require the licensee to harvest and market the entire crop in the form in which it was tested by the Department.”

**For intact-plant samples:**

1. Ensure that the entire harvest is accounted for and in the same form (i.e., intact-plants).
2. Clip the top 20 cm of hemp plant, primary stem, including leaf and female floral material.

**For ground plant or ground floral material samples:**

1. Ensure that the entire harvest is accounted for and in the same form (i.e., all harvested material whether whole plant or floral material only must be ground with no intact plants or whole flowers remaining from that harvest).
2. Sample material from bag or container that is collected from four separate areas in the field from which the material is harvested.
1. §61-29-5.4 (b) - We recommend an amendment with the following language to permit duplicate sampling for third party analysis.



“The sampled material shall be divided into three equal parts. One part shall be used for testing, one part shall be retained for retesting, and one part may be sent by the Department through their chain of custody protocols to a third party laboratory. Sampled material will only be sent to a third party laboratory at the request and expense of the Licensee.”

1. §61-29-5.7 - We recommend that the Department be required to provide actual mileage incurred for inspection and sampling. If the Department goes to a single county to test multiple farms, that mileage should be shared pro-rata between the farms that are inspected on that trip. For example, if the Department drives to a farm in Wood County for testing, they should not bill each farm in Wood County for the travel time and mileage from the Guthrie Center to their farm, but rather, the Department should aggregate the travel time and mileage driving to that county and bill each farmer that was inspected with a pro-rata share of that cost.
1. §61-29-6.11b - We opposed this requirement for the same reasons set forth in comment 1 above.

#### **TITLE SERIES 61-30**

1. §61-30 - We oppose the requirement for registering those who possess, handle, transport or sell hemp products or extracts. Rather, we recommend that registering hemp products be an “option” for retail establishments in West Virginia, as the enabling statute prohibits the department from requiring them to obtain a license as stated in *W. Va. Code §19-12E*.

“Notwithstanding any provision of the code to the contrary, a person **need not obtain a license to possess, handle, transport, or sell hemp products or extracts**, including those containing one or more hemp-derived cannabinoids, including CBD.” *W. Va. Code §19-12E-5 Industrial Hemp Licensing (f) (1)*.

**Rationale:** The Department’s proposed rule is creating a “*de facto license*” for hemp retailers to sell products, which is contrary to statute. If this, however, where an “option” for a retailer to gain Department inspection and approval, this would create a competitive quality standard for products sold in West Virginia. This registration would then inform the consumer as to the quality of the products would and provide retailers an incentive to register their products with the Department and advertise approved products to gain an advantage in the marketplace.

#### **In the alternative, we advocate for the following amendments to Title Series 61-30:**

1. §61-30-2.18 - We recommend the following amendment to this section to conform with *W. Va. Code §19-12E*.

"Licensee" means an individual or business entity possessing a license issued by the Department to grow, handle, cultivate, or process hemp. A ~~"licensee" also means an individual or business possessing a license issued by the Department to sell and/or distribute hemp products.~~

1. §61-30-2.24 - We recommend removing this section in its entirety. This section is redundant of Section 2.13 that defines hemp, including the THC threshold. This section automatically accommodates the federal standards, allowing the Department to conform with any changes on the federal level.
1. §61-30-3.1 - We recommend removing the requirement for retailers who sell hemp products to register products grown and manufactured in West Virginia. The Department will be involved in regulating the production and manufacturing of products sold in West Virginia, making these additional fees unnecessary and redundant. Section 4.1 required the manufacturer to register their products that retailers will ultimately sell. The Department should require registration for out of state products to ensure that they meet our quality control standards as they were not grown or manufactured in the state under our regulatory framework.
1. §61-30-4.3 - We recommend removing this section in its entirety. Rather, we suggest that the manufacturer or retailer of a product be required to register with the Department to put the Department on notice, but not be required companies to "register" every single hemp product at \$200.00 per product.

**Rationale:** The regulatory cost is overly burdensome and will result in a cost prohibitive regulation for manufacturers and retailers. This will make products grown and manufactured in this state unable to compete with products that are produced in other states with fewer regulatory costs. Requiring a registration fee of \$200.00 per product is an astronomical cost requirement, and will result in an immediate downturn for hemp product sales in this state.

1. §61-30-5 - We recommend removing this section in its entirety as it conflicts with *W. Va. Code §19-12E*. The Department is in essence requiring a "de facto license" to distribute hemp products or extracts. This is an overreach and exceeds the scope of regulatory authority granted by the West Virginia Legislature in the enabling statute.
1. §61-30-9 - We recommend the addition of a "notice requirement" for manufacturers and retailers before they are inspected and tested by the Department.
1. §61-30-10 - Section 10.1 expressly states that the seller is required to apply for their "license" annually. We recommend removing all references to "seller" in this section as it conflicts with *W. Va. Code §19-12E* for the reasons stated herein.

Thank you for your consideration in reading our public comments. If you have any questions or concerns, please do not hesitate to contact us. We look forward to attending the legislative rule committee hearings to address our concerns.

Kind regards,

Tracy Brown, Owner  
Brown's Hillside Herb Garden

# Brown's Hillside Herb Garden

72 W. Wildwood Drive, Parkersburg, WV 26101  
304.482.9741 [tracy.brown74@hotmail.com](mailto:tracy.brown74@hotmail.com)

July 15, 2019

Madison Birchfield  
West Virginia Department of Agriculture  
1900 Kanawha Blvd. East, Room E-28  
Charleston, West Virginia, 25305-0170  
[rulescomments@wvda.us](mailto:rulescomments@wvda.us)  
**VIA EMAIL ONLY**

**RE: PUBLIC COMMENTS FOR TITLE SERIES 61-29 AND 61-30**

Ms. Birchfield:

Please see the following public comments to the above referenced legislative rule amendments.

## TITLE SERIES 61-29

1. §61-29-3.11 - We oppose this section in its entirety. *W. Va. Code §19-12E* prohibits the department from requiring a license to possess, handle, or process hemp.

"Notwithstanding any provision of the code to the contrary, a person need not obtain a license to possess, handle, transport, or sell hemp products or extracts, including those containing one or more hemp-derived cannabinoids, including CBD." *W. Va. Code §19-12E-5 Industrial Hemp Licensing (f) (1)*.

2. §61-29-3.12.b - We oppose the requirement to re-submit background checks after three years as it is not necessary due to section 4.5. Section 3.12.b is redundant of section 4.5 that requires a licensee to report any subsequent changes to their application, including the background check. Section 4.5 achieves the same regulatory purpose that ensures the Licensee maintains a clear background check to maintain their hemp license.

3. §61-29-4.1 - We oppose the requirement for Licensees to submit a letter and their license to the County Sheriff and State Police. This purpose may be achieved by simply publishing the list of Licensees on the WV Department of Agriculture's website. This list is currently is available on the Department's website for the county Sheriffs and State Police to access.

4. §61-29-5 - We recommend the addition of model language in this section that fairly accommodates various harvesting techniques and markets for both intact flower and ground floral materials harvested from hemp.

"All pre-harvest samples of floral material shall be taken from the designated harvested plot materials in the form (intact plant, flowers, ground materials, etc.) in which the material will be sent to the processor. An inspector must require the licensee to harvest and market the entire crop in the form in which it was tested by the Department."

**For intact-plant samples:**

1. Ensure that the entire harvest is accounted for and in the same form (i.e., intact-plants).
2. Clip the top 20 cm of hemp plant, primary stem, including leaf and female floral material.

**For ground plant or ground floral material samples:**

1. Ensure that the entire harvest is accounted for and in the same form (i.e., all harvested material whether whole plant or floral material only must be ground with no intact plants or whole flowers remaining from that harvest).
2. Sample material from bag or container that is collected from four separate areas in the field from which the material is harvested.

5. §61-29-5.4 (b) - We recommend an amendment with the following language to permit duplicate sampling for third party analysis.

"The sampled material shall be divided into three equal parts. One part shall be used for testing, one part shall be retained for retesting, and one part may be sent by the Department through their chain of custody protocols to a third party laboratory. Sampled material will only be sent to a third party laboratory at the request and expense of the Licensee."

6. §61-29-5.7 - We recommend that the Department be required to provide actual mileage incurred for inspection and sampling. If the Department goes to a single county to test multiple farms, that mileage should be shared pro-rata between the farms that are inspected on that trip. For example, if the Department drives to a farm in Wood County for testing, they should not bill each farm in Wood County for the travel time and mileage from the Guthrie Center to their farm, but rather, the Department should aggregate the travel time and mileage driving to that county and bill each farmer that was inspected with a pro-rata share of that cost.

7. §61-29-6.11b - We opposed this requirement for the same reasons set forth in comment 1 above.

**TITLE SERIES 61-30**

1. §61-30 - We oppose the requirement for registering those who possess, handle, transport or sell hemp products or extracts. Rather, we recommend that registering hemp products be an "option" for retail establishments in West Virginia, as the enabling statute prohibits the department from requiring them to obtain a license as stated in *W. Va. Code §19-12E*.

"Notwithstanding any provision of the code to the contrary, a person ~~need not obtain a license to possess, handle, transport, or sell hemp products or~~

extracts, including those containing one or more hemp-derived cannabinoids, including CBD.” *W. Va. Code §19-12E-5 Industrial Hemp Licensing (f) (1)*.

**Rationale:** The Department’s proposed rule is creating a “*de facto license*” for hemp retailers to sell products, which is contrary to statute. If this, however, where an “option” for a retailer to gain Department inspection and approval, this would create a competitive quality standard for products sold in West Virginia. This registration would then inform the consumer as to the quality of the products would and provide retailers an incentive to register their products with the Department and advertise approved products to gain an advantage in the marketplace.

In the alternative, we advocate for the following amendments to Title Series 61-30:

2. §61-30-2.18 - We recommend the following amendment to this section to conform with *W. Va. Code §19-12E*.

“Licensee” means an individual or business entity possessing a license issued by the Department to grow, handle, cultivate, or process hemp. A “licensee” also means an individual or business possessing a license issued by the Department to sell and/or distribute hemp products.

3. §61-30-2.24 - We recommend removing this section in its entirety. This section is redundant of Section 2.13 that defines hemp, including the THC threshold. This section automatically accommodates the federal standards, allowing the Department to conform with any changes on the federal level.

4. §61-30-3.1 - We recommend removing the requirement for retailers who sell hemp products to register products grown and manufactured in West Virginia. The Department will be involved in regulating the production and manufacturing of products sold in West Virginia, making these additional fees unnecessary and redundant. Section 4.1 required the manufacturer to register their products that retailers will ultimately sell. The Department should require registration for out of state products to ensure that they meet our quality control standards as they were not grown or manufactured in the state under our regulatory framework.

5. §61-30-4.3 - We recommend removing this section in its entirety. Rather, we suggest that the manufacturer or retailer of a product be required to register with the Department to put the Department on notice, but not be required companies to “register” every single hemp product at \$200.00 per product.

**Rationale:** The regulatory cost is overly burdensome and will result in a cost prohibitive regulation for manufacturers and retailers. This will make products grown and manufactured in this state unable to compete with products that are produced in other states with fewer regulatory costs. Requiring a registration fee of \$200.00 per product is an astronomical cost requirement, and will result in an immediate downturn for hemp product sales in this state.

6. §61-30-5 - We recommend removing this section in its entirety as it conflicts with *W. Va. Code §19-12E*. The Department is in essence requiring a “*de facto license*” to distribute hemp products or extracts. This is an overreach and exceeds the scope of regulatory authority granted by the West Virginia Legislature in the enabling statute.

7. §61-30-9 - We recommend the addition of a “notice requirement” for manufacturers and retailers before they are inspected and tested by the Department.

8. ~~§61-30-10~~ - Section 10.1 expressly states that the seller is required to apply for their "license" annually. We recommend removing all references to "seller" in this section as it conflicts with *W. Va. Code §19-12E* for the reasons stated herein.

Thank you for your consideration in reading our public comments. If you have any questions or concerns, please do not hesitate to contact us. We look forward to attending the legislative rule committee hearings to address our concerns.

Kind regards,

Tracy Brown, Owner  
Brown's Hillside Herb Garden

# West Virginia Department of Agriculture

Kent A. Leonhardt, Commissioner  
Joseph L. Hatton, Deputy Commissioner



July 26, 2019

Tracy Brown, Owner  
Brown's Hillside Herb Garden  
tracy.brown74@hotmail.com

Dear Ms. Brown:

Thank you for submitting public comments in response to the West Virginia Department of Agriculture's (WVDA's) proposed legislative rule, **61 C.S.R. §29, Industrial Hemp**, and **61 C.S.R. §30, Hemp Products**. All comments were reviewed by Department staff, compared to current law and practices in other jurisdictions, and considered for inclusion. Below are the responses of the Department.

#### Comment:

§61-29-3.11 - We oppose this section in its entirety. W. Va. Code §19-12E prohibits the department from requiring a license to possess, handle, or process hemp. "Notwithstanding any provision of the code to the contrary, a person need not obtain a license to possess, handle, transport, or sell hemp products or extracts, including those containing one or more hemp-derived cannabinoids, including CBD." W. Va. Code §19-12E-5 Industrial Hemp Licensing(f)(1).

#### Response:

The Department disagrees with this interpretation. Licensure to grow industrial hemp is specifically required by West Virginia Code §19-12E-5(a) ("A person growing industrial hemp shall apply to the commissioner for a license on a form prescribed by the commissioner."). See also W. Va. Code §19-12E-7 (authorizing rulemaking for "[l]icensing persons who wish to grow, cultivate, handle, or process industrial hemp"). The language cited refers to required licensure to handle "hemp products or extracts," and not the raw hemp product.

#### Comment:

§61-29-3.12.b - We oppose the requirement to re-submit background checks after three years as it is not necessary due to section 4.5. Section 3.12.b is redundant of section 4.5 that requires a licensee to report any subsequent changes to their application, including the background check. Section 4.5 achieves the same regulatory purpose that ensures the Licensee maintains a clear background check to maintain their hemp license.

#### Response:

During the 2019 Regular Legislative Session, the Legislature explicitly authorized background checks of both initial applicants and others involved with the program. See W. Va. Code §19-12E-5(c) ("The commissioner shall require each first-time applicant, and may establish requirements for other persons involved with the industrial hemp program, to submit to a state and national criminal history record check."). The Department maintains that it is sound policy, both to protect the integrity of the program and to ensure compliance with the 2018 Farm Bill, which prohibits licensure of individuals who have committed certain felonies within the preceding ten years.



Comment:

§61-29-4.1 - We oppose the requirement for Licensees to submit a letter and their license to the County Sheriff and State Police. This purpose may be achieved by simply publishing the list of Licensees on the WV Department of Agriculture's website. This list is currently available on the Department's website for the county Sheriffs and State Police to access.

Response:

The requirement in question was added at the request of the Legislature during the 2019 Regular Session. The Department believes it is good policy for growers and possessors of raw industrial hemp to work collaboratively with law enforcement, and believes that this requirement accomplishes that purpose.

Comment:

§61-29-5 - We recommend the addition of model language in this section that fairly accommodates various harvesting techniques and markets for both intact flower and ground floral materials harvested from hemp.

Response:

The Department is awaiting final guidance from the U.S. Department of Agriculture regarding the sampling and testing protocols that will be utilized. Until that guidance is provided, the Department has chosen to utilize the current testing protocols. Those protocols require pre-harvest testing, which must be done before harvest, and necessarily cannot verify the form in which the producer will ultimately provide the material to the processor.

The Department notes that sampling and testing protocols are not explicitly laid out in its legislative rule, which allows the Department to adjust its policies based on the feedback and direction provided by the U.S. Department of Agriculture and the practices of surrounding states. The Department contends that its current pre-harvest sampling practices are in line with those utilized in large number of other states and do not put the Department outside the mainstream.

Comment:

§61-29-5.4 (b) - We recommend an amendment with the following language to permit duplicate sampling for third party analysis.

"The sampled material shall be divided into three equal parts. One part shall be used for testing, one part shall be retained for retesting, and one part may be sent by the Department through their chain of custody protocols to a third party laboratory. Sampled material will only be sent to a third party laboratory at the request and expense of the Licensee."

Response:

The Department declines to adopt this policy. A licensee can collect and send a sample to a third party at the same time the Department collects its samples. Official results for required THC testing, however, are determined by the Department laboratories. Further, the Department's laboratories already split a single sample, as required by rule, into two test batches, and further divide each of those samples when performing testing, which allows for up to four tests of a sample to be performed before an adverse determination is made.

Comment:

§61-29-5.7 - We recommend that the Department be required to provide actual mileage incurred for inspection and sampling. If the Department goes to a single county to test multiple farms, that mileage should be shared pro-rata between the farms that are inspected on that trip. For example, if the Department drives to a farm in Wood County for testing, they should not bill each farm in Wood County

for the travel time and mileage from the Guthrie Center to their farm, but rather, the Department should aggregate the travel time and mileage driving to that county and bill each farmer that was inspected with a pro-rata share of that cost.

**Response:**

The Department concurs that the current rule language is unclear regarding actual mileage, and has submitted proposed changes to the rule to address that issue. See Section 5.7 ("As part of inspection and testing, each licensee shall pay actual mileage incurred, plus a charge of \$35/hour per inspector for actual drive time, mileage, inspection and sampling time. In addition, each licensee shall pay for all actual incurred laboratory analysis testing costs that the Department considers appropriate, including retesting.")

**Comment:**

§61-29-6.11b - We opposed this requirement for the same reasons set forth in comment 1 above.

**Response:**

As noted above, during the 2019 Regular Legislative Session, the Legislature explicitly authorized background checks of both initial applicants and others involved with the program. See W. Va. Code §19-12E-5(c) ("The commissioner shall require each first-time applicant, and may establish requirements for other persons involved with the industrial hemp program, to submit to a state and national criminal history record check."). The Department maintains that it is sound policy, both to protect the integrity of the program and to ensure compliance with the 2018 Farm Bill, which prohibits licensure of individuals who have committed certain felonies within the preceding ten years.

**Comment:**

§61-30 - We oppose the requirement for registering those who possess, handle, transport or sell hemp products or extracts. Rather, we recommend that registering hemp products be an "option" for retail establishments in West Virginia, as the enabling statute prohibits the department from requiring them to obtain a license as stated in W. Va. Code §19-12E.

**Response:**

During the 2019 Regular Legislative Session, the Legislature directed the Department to develop regulations for "[t]he production, sale, possession, handling, or transport of hemp products and extracts, including those containing one or more hemp-derived cannabinoids, including CBD." W. Va. Code §19-12E-7(6). Further, the Department was granted broad authority by the Legislature to do so. Following a review of current regulatory structures already utilized at the Department, and a review of the manner in which other States were addressing hemp products, the Department concluded that the most effective way to fully carry out this legislative mandate was to require registration of both the products (which may come from both inside and outside the state) and the selling locations within the State of West Virginia. The Department disagrees that product and selling location registration constitutes a "de facto" licensure. Registration is a ministerial task, whereas licensure affords discretion and contemplates evaluation of credentials and eligibility. However, following discussions with stakeholders and internal discussions, and to further the goals established above, the rule was amended to include a decal or other indication that the selling location was authorized and registered, which will allow for easier regulation and reward those who are following the rules. See Section 5.7 ("5.7. Retail facilities that register with the Department will be provided a verification document, in the form of a certificate or otherwise, for display at the retail location, which will indicate that the retail facility is an authorized location for the sale and/or distribution of hemp products.").

Comment:

§61-30-2.18 - We recommend the following amendment to this section to conform with W. Va. Code §19-12E.

"Licensee" means an individual or business entity possessing a license issued by the Department to grow, handle, cultivate, or process hemp. A "licensee" also means an individual or business possessing a license issued by the Department to sell and/or distribute hemp products.

Response:

The Department concurs in part. The second portion of the definition addresses those who are covered by the registration process, and not by the licensure covered by 61 C.S.R. § 29. The Department has created a new definition of "Registrant" to address the concerning portion of Section 2.18, and has made changes throughout the rule to correspond. The Department declines, however, to change the first portion of the definition, because it is identical to that found in W. Va. Code §19-12E-3(i).

Comment:

§61-30-2.24 - We recommend removing this section in its entirety. This section is redundant of Section 2.13 that defines hemp, including the THC threshold. This section automatically accommodates the federal standards, allowing the Department to conform with any changes on the federal level.

Response:

The Department declines to make this change. The inclusion of this definition is necessary to ensure that there will not be confusion as to how THC is defined. This statement is also needed in the event that the Department need to change the way that THC is calculated, based on federal guidance.

Comment:

§61-30-3.1 - We recommend removing the requirement for retailers who sell hemp products to register products grown and manufactured in West Virginia. The Department will be involved in regulating the production and manufacturing of products sold in West Virginia, making these additional fees unnecessary and redundant. Section 4.1 required the manufacturer to register their products that retailers will ultimately sell. The Department should require registration for out of state products to ensure that they meet our quality control standards as they were not grown or manufactured in the state under our regulatory framework.

Response:

The Department disagrees. There are currently no other rules to regulate final hemp products. The WVDA needs to know what final products are on the market (regardless of the product origin). This will ensure that all hemp products, not just those manufactured outside of the state, that are on the market are safe for public use. Moreover, the Department's oversight of the production and manufacturing process (covered in 61 C.S.R. §29) addresses the process for manufacturing products, and not the content, labeling claims, or other issues related to the products themselves that are addressed by this legislative rule.

Comment:

§61-30-4.3 - We recommend removing this section in its entirety. Rather, we suggest that the manufacturer or retailer of a product be required to register with the Department to put the Department on notice, but not be required companies to "register" every single hemp product at \$200.00 per product.

Response:

The fee related to the registration of product will be used toward costs incurred by the registration specialist, compliance officer, regulatory inspectors, chemists, and microbiologists and related costs to

collect samples, determine the suitability of the product labels, and analyze the samples for a variety of different analytes. The Department is not supported fiscally by any other means for this program and will not be capable of ensuring safe hemp products and consumer safety without the fees. Moreover, in setting its fees, the Department has reviewed fee structures and costs in other states and has determined that the fees established are both necessary to support the program and reasonable compared to other jurisdictions. See W. Va. Code §19-12E-7(4) (permitting legislative rules to address the “[a]ssessment of fees that are commensurate with the costs of the commissioner’s activities in licensing, testing, and supervising industrial hemp production”).

Comment:

§61-30-5 - We recommend removing this section in its entirety as it conflicts with W. Va. Code §19-12E. The Department is in essence requiring a “de facto license” to distribute hemp products or extracts. This is an overreach and exceeds the scope of regulatory authority granted by the West Virginia Legislature in the enabling statute.

Response:

The Department disagrees that product and selling location registration constitutes a “de facto” licensure. Registration is a ministerial task, whereas licensure affords discretion and contemplates evaluation of credentials and eligibility. However, following discussions with stakeholders and internal discussions, and to further the goals established above, the rule was amended to include a decal or other indication that the selling location was authorized and registered, which will allow for easier regulation and reward those who are following the rules. See Section 5.7 (“5.7. Retail facilities that register with the Department will be provided a verification document, in the form of a certificate or otherwise, for display at the retail location, which will indicate that the retail facility is an authorized location for the sale and/or distribution of hemp products.”).

During the 2019 Regular Legislative Session, the Legislature directed the Department to develop regulations for “[t]he production, sale, possession, handling, or transport of hemp products and extracts, including those containing one or more hemp-derived cannabinoids, including CBD.” W. Va. Code §19-12E-7(6). Further, the Department was granted broad authority by the Legislature to do so. Following a review of current regulatory structures already utilized at the Department, and a review of the manner in which other States were addressing hemp products, the Department concluded that the most effective way to fully carry out this legislative mandate was to require registration of both the products (which may come from both inside and outside the state) and the selling locations within the State of West Virginia.

Comment:

§61-30-9 - We recommend the addition of a “notice requirement” for manufacturers and retailers before they are inspected and tested by the Department.

Response:

The Department disagrees with providing a notice requirement. Effective regulation requires that regulated entities not be apprised of when they will be inspected or reviewed, as the Department wants a true “snapshot” of what happens in a normal workday. Providing notice would undermine the integrity and legitimacy of the regulatory program. Moreover, the Department does not currently give notice for any other programs.

Comment:

§61-30-10 - Section 10.1 expressly states that the seller is required to apply for their “license” annually. We recommend removing all references to “seller” in this section as it conflicts with W. Va. Code §19-12E for the reasons stated herein.

Response:

The Department concurs in part and has modified section 10.1 to remove references to a "license" and replace that reference with a renewal of registration.

We appreciate your interest in these legislative rules and your participation in the public comment process, and we look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent A. Leonhardt", with a long, sweeping horizontal flourish extending to the right.

Kent A. Leonhardt  
Commissioner

**Keaton, Jennifer**

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**From:** WV Legislative Rules Comments  
**Subject:** FW: greenberry group, llc fiscal impact

**From:** Leah mcjilton <leahmcjilton@gmail.com>  
**Sent:** Thursday, July 18, 2019 3:45 PM  
**To:** WV Legislative Rules Comments <rulescomments@wvda.us>  
**Subject:** greenberry group, llc fiscal impact

Document attached. Thank you for your time.

Leah McJilton  
West Virginia University, Institute for Labor Studies & Research  
Instructional Design & Technology Specialist  
(304) 669-1438 | [www.leahmcjilton.com](http://www.leahmcjilton.com)

Dear Ms. Madison Birchfield,

Public comments regarding rule changes to the current Wv hemp law 61csr29, title 61. The rule change shows an update to definitions. It also shows no known fiscal impacts.

First, the definition change is inadequate. The state wishes to clarify the limits of THC allowable in the industrial hemp plant grown within the state. This clarification results in the striking of "not more than one percent, or more than the concentration adopted by federal law in the Controlled Substances Act, 21 U.S.C. Secs 801 et seq., whichever is more restrictive."

The Federal Farm Bill Act signed by President Trump in Dec. 2018 has removed hemp from the controlled substance act, while simultaneously placing a .3% limit on THC. This has resulted in confusion, as there are multiple forms of THC; the most commonly known form, D9 THC, is the mind- altering cannabinoid commonly tested within the plant to ensure the hemp plant is not "marijuana." THCa, D8 THC, THCV, and d7 THC are also ordinarily present within the cannabis sativa plant. These forms of THC are not psychoactive, but are often compiled into the "total THC" count. The Total THC count is compiled as THC links to the same endocannabinoid receptors. However, these alternate forms of THC do not have psychedelic effects.

To implement these needed changes, a simple and effective process would involve measuring for d9 THC at the point of harvest, and then verify that all products created or manufactured have below the .3% d9 THC.

Properly managing this is imperative to the livelihood of Hemp farmers that are working diligently to produce and harvest hemp for oils. Extracting CBD from hemp involves costly procedures. The hemp plant should contain at least 10% CBD; anything less and more money will be spent extracting than can be made of the extracted material. Thus, in order to make the plant viable for extraction, farmers look for and purchase seeds, seedlings, or clones that should produce a content of CBD at higher levels than 10%.

Forms of CBD and THC, along with a multitude of terpenes are found within the cannabis plant. Many terpenes are shared with other flowers; linalool for example, is found in lilac and lavender. Myrcene is shared with mangoes, and humulene is commonly found in varying hops. All levels can be increased and decreased through genetic breeding, but removing either CBD or THC completely from the cannabis plant has proven impossible. Eventually, science will progress,

presenting innovations for reaching a total THC below .3%. At the present, this is not a feasible option.

Increases in CBD, THC, and the various terpenes occur to naturally attract pollination during the flowering stage of the cannabis plant. Currently, in order to increase CBD to a percentage that makes the plant viable for profitable extraction means there is a shared increase in total THC. Genetic work has reduced the d9 THC content to maintain CBD percentages in the 14 to 15% range.

West Virginia's current hemp law would allow 1% total THC limits. I have spoken with several genetics professionals that claim they can easily increase CBD content to 27-30% yields within the 1% limit.

The suggested change would not only remove West Virginia from the forefront of leading CBD farming, it would place us in a severe disadvantage and ruin a budding industry.

Second, while not addressed in the fiscal note, the financial impact of this change will cripple many hemp farmers and hemp companies. My company, Greenberry Farms, along with several other companies, have invested heavily in the CBD extraction and development field. Immediate changes to this year's harvest will likely occur, requiring premature harvests that produce plant material not viable for extraction.

My neighbor invested in a \$2 million-dollar extractor. Two other investors are currently building, or intending to build, million-dollar extractors in Harrison county. One operator has now put her plan on hold until further clarification of the changes.

The fiscal impact of these changes will be severe. Please consider making the rule change to clarify D9 THC must be under .3% and not a total THC level.

Thank you for your time.

Bill Flanigan, COO

Leah McJilton, CIO

Greenberry Group, LLC



# West Virginia Department of Agriculture

Kent A. Leonhardt, Commissioner  
Joseph L. Hatton, Deputy Commissioner



July 26, 2019

Leah McJilton  
WVU, Institute for Labor Studies & Research  
leahmcjilton@gmail.com

Dear Ms. McJilton/Greenberry Group, LLC:

Thank you for submitting public comments in response to the West Virginia Department of Agriculture's (WVDA's) proposed legislative rule, **61 C.S.R. §29, Industrial Hemp**, and **61 C.S.R. §30, Hemp Products**. All comments were reviewed by Department staff, compared to current law and practices in other jurisdictions, and considered for inclusion. Below are the responses of the Department.

**Comment:**

You indicated in your comment that you would like to see the definition of hemp allow the amount of tetrahydrocannabinol on a dry weight basis to be no greater than 1.0%, rather than the proposed percentage of 0.3%.

**Response:**

During the 2019 Regular Session, the WV Legislature changed the code section that previously set the THC percentage at 1.0% to match the federal standard. The Department is committed to complying with the federal THC concentration for hemp defined in 7 U.S.C. §5940, currently set at 0.3%, and will not change the definition.

**Comment:**

You commented on the negative fiscal impact to you if the THC percentage is set at 0.3%.

**Response:**

The Department reiterates its commitment to full compliance with the federal THC concentration for hemp defined in 7 U.S.C. §5940 and notes this standard is common nationwide.

We appreciate your interest in these legislative rules and your participation in the public comment process, and we look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent A. Leonhardt", is written over a horizontal line.

Kent A. Leonhardt  
Commissioner

**Keaton, Jennifer**

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**From:** WV Legislative Rules Comments  
**Subject:** FW: West Virginia Dept of Agriculture Hemp Rules Public Comment

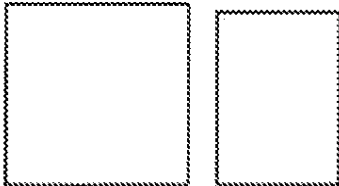
**From:** Randy Query <rquery@a2la.org>  
**Sent:** Monday, July 8, 2019 10:53 AM  
**To:** WV Legislative Rules Comments <rulescomments@wvda.us>  
**Cc:** Anna Williams <awilliams@a2la.org>  
**Subject:** West Virginia Dept of Agriculture Hemp Rules Public Comment

Dear Ms. Birchfield,

I hope that this finds you well. I invite your attention to the attached comments for the Industrial Hemp Rules. Please do not hesitate to contact us with any questions or comments.

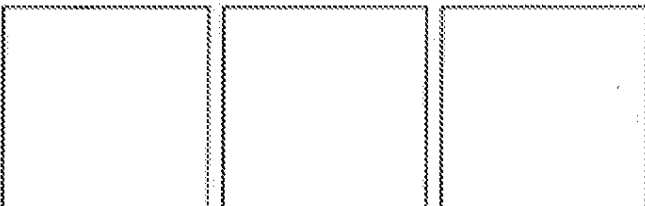
Kind regards,  
Randy

**Randall Query**  
A2LA | Director of Government Relations  
Office Hours: 7AM - 5:00PM (EST)  
My Hours: 7AM-4PM (EST)  
Office Phone: 301 644 3248  
Direct Line: 301 644 3221  
[rquery@A2LA.org](mailto:rquery@A2LA.org)

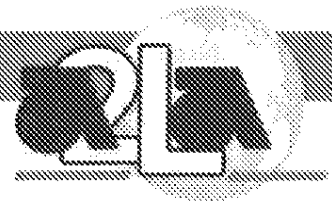


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[www.A2LA.org](http://www.A2LA.org)



July 8, 2019



Ms. Madison Birchfield  
West Virginia Department of Agriculture  
1900 Kanawha Bld. East  
Charleston, WV 25305

**61CSR29 Industrial Hemp**

Dear Ms. Birchfield,

I am writing today to express the position of the American Association for Laboratory Accreditation (A2LA) as it pertains to laboratory testing as proposed in the rules, Title 61 Legislative Rule Department of Agriculture Series 29 - Industrial Hemp, that is currently open for public comment. I kindly submit the following comment for your review and consideration.

**Section 61-29-5 Inspection Program for Testing and Supervision During Growth and Harvest** includes requirements for quantitative laboratory determination of the THC concentration.

We recommend that the following language be consider for qualifying the laboratories under these rules and be added to section 5.4.c:

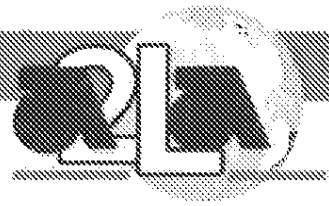
Quantitative laboratory determination of the THC concentration will be performed according to protocols approved by the Commissioner. *Laboratories performing the testing must be accredited to the ISO/IEC 17025 standard. The assessment and accreditation process must be carried out by a non-profit accreditation body that is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement operating in conformance with the ISO/IEC 17011 standard.*  
(Recommended additional language in italics).

Technically qualifying the laboratory, through the reliance of accreditation, will assure the Commissioner that the laboratories used, have been externally reviewed and have the resources necessary such as the appropriate equipment and trained and qualified personnel to conduct the specific hemp testing being requested. Also, the Commissioner and industry can be assured of the accuracy of the results as significant decisions such as suspending or revoking licenses are based on the laboratory analyses. Additionally, laboratories and industry are provided with an even-playing field. West Virginia Department of Agriculture staff efforts can then be directed to oversight of the program.

We also noted a couple of minor edits within the rules that may need correcting as follows:

2.1 "Act" – means the Industrial Hemp Development Act of 2002... Should this be 2020?

5.3 During any inspection and/or sampling, the licensee, or his or her authorized representative shall be present at the growing operation and provide the Department's inspector with *compet*e and *unrestricted to* access all industrial hemp plants and seeds...Should this be complete and unrestricted access to all industrial hemp plants and seeds?



A2LA is a nonprofit, non-governmental, public service, membership society that strives to promote quality in testing and testing-related activities through accreditation and is dedicated to promoting uncompromising quality in accreditation accepted everywhere and by everyone.

A2LA remains ready to be a continuing source of support and guidance to the West Virginia Department of Agriculture on issues of quality, laboratory competence, and accreditation and will continue to support the valuable work being done. We would be pleased to provide more background and elaborate on our comments at your convenience. If interested, please contact either Randy Querry, Director of Government Relations at [rquerry@A2LA.org](mailto:rquerry@A2LA.org) or Anna Williams, Sr. Accreditation Officer, at [awilliams@A2LA.org](mailto:awilliams@A2LA.org).

Best regards,

A handwritten signature in black ink, appearing to read 'Lonnie Spires', is positioned above the printed name and title.

Lonnie Spires  
CEO, A2LA

# West Virginia Department of Agriculture

Kent A. Leonhardt, Commissioner  
Joseph L. Hatton, Deputy Commissioner



July 26, 2019

Randy Querry, Director of Government Relations  
A2LA  
5202 Presidents Court, Suite 220  
Frederick, MD 21703  
[rquerry@a2la.org](mailto:rquerry@a2la.org)

Dear Mr. Querry:

Thank you for submitting public comments in response to the West Virginia Department of Agriculture's (WVDA's) proposed legislative rule, **61 C.S.R. §29, Industrial Hemp**, and **61 C.S.R. §30, Hemp Products**. All comments were reviewed by Department staff, compared to current law and practices in other jurisdictions, and considered for inclusion. Below are the responses of the Department:

**Comment:**

Your comment suggested there be a requirement for ISO/IEC 17025 standards for third party laboratories issuing certificate of analysis.

**Response:**

The Department agrees with your suggestion and will amend the rule to incorporate that change.

**Comment:**

You pointed out typographical errors in the rule.

**Response:**

The Department agrees with your review and has corrected the typographical errors.

We appreciate your interest in these legislative rules and your participation in the public comment process, and we look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent A. Leonhardt", is written over a horizontal line.

Kent A. Leonhardt  
Commissioner